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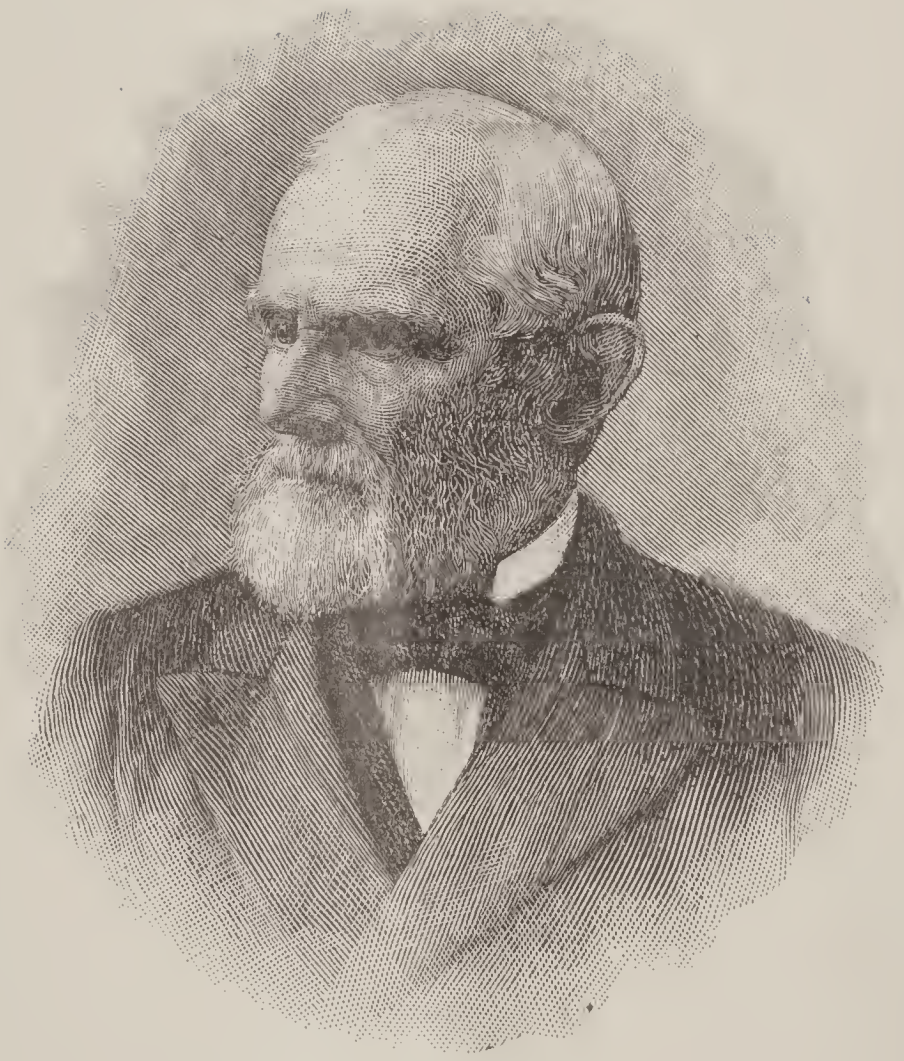

ISRAEL WARD ANDREWS.

ECLECTIC EDUCATIONAL SERIES

MANUAL OF THE CONSTITUTION

OF THE

UNITED STATES

BY

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OF THE CINCINNATI BAR

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PREFACE

THE development of Civil Government in the United States during the past twenty-five years has rendered necessary the thorough revision and resetting of Andrews's Manual of the Constitution—a text-book which, in spite of numerous competitors published during the past decade, has continually increased in favor with teachers and students.

The book has been brought up to date in all particulars—including especially the more recent interpretations of the Constitution by the courts, and the important statutes calculated to produce permanent political effect. The utmost care, however, has been taken to keep to the original design of the book; and those familiar with the work will find that no violence has been done to its original character.

Andrews's Manual grew out of the necessities and experiences of the classroom. For the proper instruction of the student in the important subject of Civil Government, a clear exposition of the great principles of the Constitution is needed, with a summary of the legislative provisions in which they have been embodied. When the author took charge of this department of study in Marietta College,[1] he found himself embarrassed by the lack of suitable text-books meeting either of these requirements, especially the latter. Questions were continually suggesting themselves to which answers could be obtained only after laborious research and the study of scattered volumes.

[1] Dr. Andrews was connected with Marietta College for fifty years; he was made president of it in 1855, and died in 1888.

Urged on by a deep interest in the subject, and availing himself of the unusual facilities for the prosecution of studies of this character furnished by the library of the College, the author entered upon a somewhat extended investigation of our governmental history. The materials thus accumulated, having for some years furnished the basis for instruction by lectures, were condensed into this form, and given to the public in the hope that other instructors might be in some measure relieved from the excessive labor which similar personal examination would involve.

While the primary object was to provide a suitable text-book, adequate to all the requirements of the study, a conviction that a knowledge of our government can not be too widely diffused, and that large numbers would welcome a good work on this subject, led to the attempt to make the volume a manual adapted also for consultation and reference by the general public. With this end in view the author embodied in the work that kind—and, so far as space would allow, that amount—of information on the various topics which an intelligent citizen would desire to possess.

As the value of a work of this kind depends in large measure upon its accuracy, it is proper to say that in nearly every instance the statements touching the legislation or other action of the government have been taken from official publications.

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MANUAL OF THE CONSTITUTION

CHAPTER I.

Civil Government — Its Object, Origin, and Nature — Different Forms of Government — Peculiarity of that of the United States—Not a Consolidated Republic nor a League of States.

Knowledge of our Government.—A knowledge of the nature and operation of the government under which we live is necessary for the successful prosecution of the business of life, and to secure the happiness of ourselves and of those dependent upon us. We can thus adapt ourselves to the circumstances in which we are placed, and avoid those perplexities and difficulties in which one ignorant of the laws and institutions of his country is liable to be involved. The fact that a man is subject to a government is a sufficient reason for studying its character and workings, although he may have no participation in its management.

In a republican government the importance of such knowledge is still greater, because the people are not only amenable to the laws, but also have a voice in electing those who make and execute them. He who lives under a despotism should acquaint himself with its character and workings for his own protection ; a citizen of a republic should do the same, because he is to some extent responsible for the government.

Two circumstances facilitate the acquisition of a competent knowledge of our government. First, our national existence extends over a comparatively brief period. But little more than a hundred years have passed since we became an inde-

pendent people, while most of the civilized nations of the world have had a long and checkered history. Secondly, our Constitution is a written instrument, framed with the utmost care, and adopted by the people after the most careful deliberation. No other nation has a constitution that can compare with it, either in its comprehensiveness and completeness of subject, or in the precision of its language.

The Object of Civil Government can not be better expressed than in the words of our Constitution. It is to "establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty." These were the express ends to secure which the people of the United States ordained and established our national Constitution. These are the ends which all governments, of whatever form, are under obligation to seek. Civil governments are not established for the good of the rulers, but for the good of the people. They are not for the good of one or a few, at the expense of the others, but for the good of all.

Government a Necessity.—The general good could not be secured without government. Civil government is thus a necessity. Without it, justice could not be established, nor domestic tranquillity insured, nor the common defense provided for, nor the general welfare promoted, nor the blessings of liberty secured. Law is the guardian of liberty. Without law there would be no liberty, but in its stead, anarchy. One object of civil government is to protect us in our rights. It does this by restraining those who would interfere with these rights. Civil government is thus rendered necessary by the disposition of some to do wrong to others, and it can not be dispensed with so long as this disposition to interfere with the rights of others continues.

But government is not merely repressive. Its necessity is not wholly owing to the fact that there are wicked men in every community. Law and government are essential for the good as well as for the bad. The "general welfare" is to be

promoted, as well as the individual to be protected in his rights. There are many things to be done for the advancement of a nation, which could not be done without that combination and coöperation which are found only in governments. Science and art are to be fostered, education is to be encouraged, civilization to be advanced. Government has thus more to do than to restrain violence, to redress wrongs, and to punish the transgressor. There is government in heaven as well as on earth.

Government not a Necessary Evil.—It is sometimes said that government is a necessary evil; and that that government is best which governs least. The tendency of such language is to excite distrust and aversion, whereas governments should be respected, obeyed, and loved. A government founded in justice and administered with wisdom is always a good. Were government a necessary evil, it would be impossible to account for the existence and strength of patriotism. The love of country, which is stronger than the love of kindred, or any other of the natural affections, is itself a proof that by nature we regard government as a good and not as an evil. There may be abuses, but men look forward to the time when they will be remedied. That is not the best government which governs least; though, other things being equal, that may be the best which makes the least show of governing. A wise ruler, whether in the family or the state, will never give needless prominence to the fact that he is a ruler, while an unwise ruler is disposed to make a display of his authority. In a good government, if the law is broken punishment must follow; but the better the government, the less will be the tendency to break the law, and therefore the less the necessity of inflicting punishment. In a well-regulated school or family we see no manifestation of government, and apparently no government is needed; but this apparent absence of government is itself a proof of the excellent manner in which the government is administered.

Society the Natural State.—Society is the natural state of man. His whole constitution shows that the intention of his Maker was that he should live in society and under government. History testifies that such has been the case from the beginning. In every age, and in every part of the earth, men have lived together in families, tribes, nations. They have been under some authority. Civil society is thus a universal fact. It is not the result of any agreement among men, but it is the natural working out of the human constitution. We are born into the nation as into the family. We do not make society,—we find it already existing. We are to obey the laws of the land because they are the laws, just as the child is to obey the law of the family. In neither case is any consent asked.

Civil Authority not from any Compact.—It is not correct to say that civil society derives its authority through any compact or agreement, for then the power possessed by society would be limited to that received from the individual men composing the society. But the powers of government include those which never belonged to the individual man, and therefore could never have been conferred by him upon society. Indeed, if there ever was a state of nature, as some have supposed, prior to the existence of civil society, when men lived without government, all possessing equal rights, there could manifestly have been no right to govern, since no one could have had authority over another who was his equal. Men can not give what they do not possess, and society could never obtain its right to govern from the individual citizens, since they never had such a right.

Suppose, however, that this idea of a state of nature antecedent to civil society were fact and not fiction, and that men lived without government, all possessing equal rights; what is to be done with those who do not choose to give up their rights? Plainly, the majority could have no authority to coerce the minority, and government would be an impossi-

bility. Nor could one generation bind the one succeeding it ; and each newborn citizen would be rightfully independent of all governmental control until his individual rights should be voluntarily deposited in the common stock.

The authority of civil society is not, then, derived from the individual citizens composing that society. They surrender nothing ; society receives nothing. The fallacy in the theory of the "social compact," considered as an explanation of the origin of civil government, consists in confounding men as *individuals* with men as constituting a *community*. Wherever an independent community of men can be found, there is already civil society. There is no necessity for men to surrender a part of their rights in order to form a basis for authority ; the authority exists without any such surrender. In society, man has all the rights which he could have in any state of nature, if any such state of nature out of society can be conceived of. As has already been said, society is the natural state of man.

Society of Divine Origin.—It appears from the above that society is of divine origin. It is the intention of our Creator that we should live in society and under government, as it is that the race should be grouped into families, and the child be subject to his parents. "The powers that be are ordained of God." "There is no power but of God." No individual man has any divine right to be a king ; but as civil government is of divine origin, society has a divine right to have rulers. Whoever, therefore, exercises legitimately any function of the civil ruler, whether he be king or president, legislator or judge, is exercising an authority which is as divine in its origin as is the authority of a parent over his child.

Civil authority is of divine origin, and it is lodged in the people. It is held by the nation as a whole, and not by the people as individuals. Society is not a congress of sovereigns. The power of society does not come from the individual

members, but it belongs to the nation as such. The nation receives it from God, as a parent receives from God his right to govern his children. If we suppose that civil society possesses no authority except what has been imparted to it by the individual members, it follows, as we have already seen, that government can not be extended over those who have not surrendered their share of sovereignty. In such a case, majorities would have no right to control minorities. The supposition that civil government rests upon individual sovereignty would thus virtually destroy all governmental authority.

The Power of Society Limited.—It may be thought that the theory that the authority is in the *community*—the people as a whole—would lead to the other extreme of a social despotism. But, although the sovereignty is in the people collectively, they have no right to exercise any authority which God has not bestowed upon them. The parent has no right to govern his child except for the child's good; neither has the nation any right to do anything which is not for the good of the people. Each member of the community has inalienable rights, with which society has no right to interfere. It is not claimed that all rights come from the state; many do, but some do not. Some belong to man as man. Humanly speaking, the sovereignty is in the nation—the people collectively. But this sovereignty is not absolute; it must be exercised in subordination to a higher sovereignty which recognizes the dignity and worth of the human being.

What is a Sovereign Nation?—A political community, independent of all others, framing its own constitution, and enacting its own laws without hinderance or question from any other community—in short, a body politic, with no political superior, is a sovereign state or nation.[1] France and

[1] The word *state* is used by writers on government to signify a separate political community; it is synonymous with nation. In the United States it is also applied to a member of the American Union. In this volume, when used in the former sense, it will be written *state;* when in the latter sense, *State.*

Great Britain are sovereign nations; so is the United States. The sovereignty is in the *state*, as distinct from the *government* of the state. The people collectively constitute the state; the body of men who for the time being are invested by the state with civil authority constitute the government. The political society exists as an historical fact; thus existing, it frames for itself a constitution and adopts a government. The nation must exist as a separate political community before it can give itself a constitution. The constitution does not constitute the nation, but only the government of the nation. A constitution is an organic law, and presupposes a body politic possessing the authority to enact such a law. The constitution thus made by a nation already existing, prescribes the mode in which the nation determines that its governmental affairs shall be managed. It is a kind of letter of instructions to those who are to act as its ministers in carrying on the government. It is the organic law to which all other laws must be conformed. The constitution is made by the nation for the guidance of the government. The government can not change it, but the nation can.

Distinction between Nation and Government.—This distinction between the state or nation, on the one hand, and the government on the other, is of great importance. The sovereignty is in the nation. As sovereign, the nation may constitute the government according to its own judgment, and give it such form as it pleases. But the sovereignty is in the nation as such, and not in the individual men composing it. The will of the nation is expressed in the constitution, which is the supreme law until the nation chooses to alter it; and this alteration must be made in the mode which the nation has itself prescribed in the same organic law. A large majority of the people may disapprove of a clause in the constitution, but their disapprobation passes for nothing until the obnoxious clause is constitutionally removed from the consti-

tution. The same is true of the laws of a country. They are supposed to be valid until repealed. The constitution is made by the people, and the laws by the government; but both are in force until changed or repealed by the power that enacted them. The people as a whole do not make the laws; the government does not make the constitution.

The Constitution Twofold.—Some writers distinguish between the constitution of the nation and that of the government. Jameson calls the first a constitution *considered as an objective fact.* It is the "make-up of the commonwealth as a political organism; that special adjustment of instrumentalities, powers, and functions, by which its form and operation are determined." The second is a constitution *considered as an instrument of evidence.*[1] Brownson says, "The constitution is twofold; the constitution of the state or nation, and the constitution of the government. The constitution of the government is, or is held to be, the work of the nation itself; the constitution of the state, or of the people of the state, is, in its origin at least, providential, given by God himself, operating through historical events or natural causes. The one originates in law, the other in historical fact." [2]

The constitution of the nation is unwritten. The constitution of the government may be written or unwritten. The constitution of the nation is its character—what it *is*, at any epoch. The constitution of the government is what the nation chooses to make it. As the nation changes, its constitution changes accordingly; and the nation should change its governmental constitution from time to time, to make it correspond with the real constitution. The American nation was in existence a number of years before it formed a written governmental constitution. The present constitution, which went into operation in 1789, has received slight modifications at different times, and will continue to be modified in

[1] Jameson's *Constitutional Convention*, page 66.
[2] Brownson's *American Republic*, page 138.

future years, as the character of the nation itself is changed. We shall see, when the mode of amending the Constitution comes to be considered, that most ample provision has been made against hasty alterations in that instrument. Indeed, there is more reason to apprehend that needed changes will be delayed too long than that those which are unnecessary will be introduced.

Forms of Government.—There are various forms of government, differing from one another more or less widely. In a *monarchy*, the ruler is a single person. An *aristocracy* is a form of government in which the authority is held by a few. In a *democracy*, the power is exercised by the people themselves. But most existing governments combine two or more of these forms.

Monarchy.—In a monarchy, the whole authority is not necessarily in a single person. Most of the governments of Europe are called monarchies ; but in some of them the king has less power than the President of the United States. An absolute monarchy is a despotism. The monarch governs according to his own will and caprice, and not according to established laws. Such a government is clearly illegitimate. It is a government of force. In a limited monarchy, the king, prince, or emperor, or whatever he may be called, though nominally the sovereign, wields a power more or less restricted. Great Britain and all the provinces subject to it are called His Majesty's Dominions. The government is carried on in the sovereign's name. The army and navy are called His Majesty's troops and ships. But at the same time his real power is small. The laws are enacted by Parliament, and they are administered by the ministers, who are called His Majesty's government. Parliament is composed of two houses : the House of Lords, which is chiefly hereditary, and the House of Commons, which is elective.

Republic; Democracy.—A *republic* is properly a commonwealth. The domain belongs to the nation rather than to the

king or the nobles. It is a government in which the authority is exercised by the representatives of the people. It differs from a *democracy* in this, that in the latter the power is exercised by the people themselves, while in the former the people elect representatives to act for them. A pure democracy can exist only in a small territory, where all the people can meet and enact laws. A republic may be democratic or aristocratic. If suffrage is universal, if the rulers are elected by the whole people, the government is a democratic republic. In proportion as suffrage is restricted and the number of voters diminished, the government becomes less democratic and more aristocratic.

Mixed Governments.—Most existing governments are, to some extent, republican, although at the same time monarchical. The monarchs of Great Britain rule by hereditary right; most of the members of the House of Lords hold their seats by virtue of their birth; but the members of the House of Commons are elected. The government is thus at the same time monarchical, aristocratic, and republican; and in its republican part it is very democratic, as the suffrage is nearly universal. Macaulay calls the Roman emperors republican magistrates named by the Senate.

Peculiarity of our Government.—Our own government is peculiar. John Quincy Adams speaks of it as "a complicated machine. It is an anomaly in the history of the world. It is that which distinguishes us from all other nations, ancient and modern." Dr. Brownson says, "The American Constitution has no prototype in any prior constitution. The American form of government can be classed throughout with none of the forms of government described by Aristotle, or even by later authorities. Aristotle knew only four forms of government: monarchy, aristocracy, democracy, and mixed governments. The American form is none of these, nor any combination of them. It is original, a new contribution to political science, and seeks to attain the end of all wise and

just government by means unknown or forbidden to the ancients, and which have been but imperfectly comprehended even by American political writers themselves."[1] [2]

Our government is not a simple or consolidated republic on the one hand, nor, on the other, is it a league of states. Many seem to suppose that there is no middle ground between these two; that the denial of the one is equivalent to the affirmation of the other. The American people constitute a nation, with a republican government. The nation has a constitution in which the character of the government is clearly delineated. This Constitution is the supreme law of the land. But the country is divided into divisions, called States, each of which has a constitution. The people of the whole nation have made the general Constitution, while the people of each State have made a constitution for that political division. The national Constitution is operative throughout the whole domain; it is binding on all the people. The constitution of a State is confined in its operation to the State limits; beyond them it has no force. But within the State it is the organic law, whose provisions, unless conflicting with the national Constitution or the laws enacted under it, must be carried out. Were the government a league of states, there could be no supreme national government; were the nation a

[1] Brownson, page 5.

[2] It is a noteworthy fact that the system that we have of dividing the sovereignty and jurisdiction of government, as to subject matter, between the States and the United States, making the States supreme over their respective territories and inhabitants as to certain subjects of power, and the United States supreme over the whole territory and all inhabitants as to the subjects of power confided to it, is somewhat like the system of government of the Five Nations, or Iroquois Nation, which originally inhabited New York. The government inaugurated under the Articles of Confederation was still more like the Iroquois form in that it embodied the distinctive feature of reliance upon moral force alone to enforce obedience to the federal authority by the local governments and the inhabitants. The Iroquois were the most powerful Indian tribe with which the English settlers came in contact, and this remarkable feature of their system of government, and its wonderful efficiency, excited much attention and caused it to be described by pre-revolutionary writers. The framers of the Constitution must have been conversant with this Indian government, and they may have received from this humble source some important suggestions for the system they adopted.

consolidated republic, there could be no State constitutions. Unquestionably, the American people are a single people, a nation in the same sense, and just as truly, as the people of France. But at the same time the national Constitution everywhere recognizes the existence of the States, with their separate constitutions and their various departments.

State and Nation not like County and State.—Were our government a simple republic, we should have no laws except those enacted at Washington. In that case, a State would bear to the nation the same relation that a county does to a State, as is sometimes affirmed to be the case now. But the statement is incorrect. A county can do nothing politically which it is not authorized by the State to do. A State can do anything politically which does not contravene a law or the Constitution of the nation. The people of a county, as such, have no constitution, and have no power to form one. The people of a State have a constitution, and may alter it at pleasure, provided its provisions are in harmony with the national laws and Constitution. The county originates nothing; all its power comes to it from a political body above it. The State originates everything; its power coming directly from the people themselves.

The Nation and the States Born Together.—Although the States have constitutions, and derive their governmental authority from the people, this does not make them sovereign states, or the general government a mere confederacy. The American people are one people, yet their government is not a consolidated one. They exist in States, yet their government is not a confederated one. From the day when the Declaration of American Independence was made, they have existed as a nation, yet grouped into States. The nation and the thirteen original States began their existence together. Neither preceded, neither followed. The American people "have not, as an independent sovereign people, either established their union, or distributed themselves into distinct and

mutually independent States. The union and the distribution, the unity and the distinction, are both original in their Constitution, and they were born United States as much and as truly so as the son of a citizen is born a citizen, or as every one born at all is born a member of society, the family, the tribe, or the nation. The Union and the States were born together, are inseparable in their constitution, have lived and grown together; and no serious attempt till the late secession movement has been made to separate them."[1]

The Powers of Government Divided.—"Say the people of the United States are one people, in all respects, and under a government which is neither a consolidated nor a confederated government, nor yet a mixture of the two, but one in which the powers of government are divided between a general government and particular governments, each emanating from the same source, and you will have the simple fact."[2] "Strictly speaking, the government is one, and its powers only are divided and exercised by two sets of agents or ministries."[3] To the same purpose Jameson: "And here I may remark that the Constitution of the United States is a part of the constitution of each State, whether referred to in it or not, and that the constitutions of all the States form a part of the Constitution of the United States. An aggregation of all these constitutional instruments would be precisely the same in principle as a single constitution, which, framed by the people of the Union, should define the powers of the general government, and then by specific provisions erect the separate government of the States, with all their existing attributions and limitations of power."[4]

One Government in Two Spheres.—No other nation has such a distribution of the powers of government. Foreigners almost universally fail to comprehend it, and many of our own people find it a perplexing subject. The general government and the particular governments together con-

[1] Brownson, page 222. [2] Ibid, page 231. [3] Ibid, page 250. [4] Jameson, page 87.

stitute the government of the United States. The former is general, as its care extends to the whole Union ; the governments of the States are particular, as limited to the local interests of the individual States. The two in combination form the one supreme national government, or government of the United States. It is one government, exercising its powers in two different spheres. The authority comes from the same people, the people of the United States, in whom is the whole sovereignty. As stated above by Judge Jameson, the general Constitution and the constitutions of the States might be considered as one great instrument. There are, first, those articles which are concerned with the interests of the whole, and then, in succession, those which relate to the particular and local interests of the several States.

Or we may say that the people of each State have two constitutions ; one local and particular, the other general. The latter has been adopted by them in conjunction with the people of the rest of the nation ; the former they have adopted by themselves, yet taking care that none of its provisions are in conflict with those of the general Constitution. The local constitution is no more the constitution of a particular State than the general Constitution is. The people of New York, by their ratification of the general Constitution, and the people of Ohio, by their adoption of it at their entrance into the Union, have made it their own as truly as those constitutions for the adoption of which they alone voted. Every provision of the Constitution of the United States is to be regarded as expressing the will of the people of Ohio as much as any provision of the constitution of that State. There is, thus, no legitimate place for conflict between the general government and the governments of the States, because they have all been formed by the same authority—the people of the nation. It was never intended that these should be arrayed against each other like political parties, or serve as "checks and balances," after the example of some other governments.

CHAPTER II.

THE COLONIAL GOVERNMENTS—ROYAL, PROPRIETARY, AND CHARTER—THE CAUSES OF THE REVOLUTION—THE CONTINENTAL CONGRESS—THE DECLARATION OF INDEPENDENCE.

The Thirteen Colonies. — The colonies which declared their independence of Great Britain in 1776, and formed a new nation, known from that time as the United States of America, were thirteen in number; viz., Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. These had been settled at various times, from 1607, when the settlement of Virginia was commenced at Jamestown, to 1733, when the colony of Georgia was established. They were not all settled as so many distinct colonies, but various changes had taken place among them. Thus, the colony of Massachusetts, as it existed at the beginning of the War of the American Revolution, embraced what constituted originally three distinct colonies: that of Massachusetts Bay, that of New Plymouth, and the province of Maine.[1] The colony of New Haven had been merged in 1665 in that of Connecticut. The Carolinas, on the other hand, had been divided; and what was at first a single colony, under the name of Carolina, was made two in 1732, and the divisions were called by the present names of North Carolina and South Carolina.

Title from Discovery.—All the lands were held by titles coming from the English or British crown, which claimed

[1] These were incorporated into one by a charter granted by William and Mary in 1691, under the name of the Province of the Massachusetts Bay in New England.

the country by the right of discovery.[1] Near the close of the fifteenth century, King Henry VII. had sent out John and Sebastian Cabot on voyages of exploration, and they discovered the island of Newfoundland and sailed along the coast from the fifty-sixth to the thirty-eighth degree of north latitude. All this territory, in consequence, was claimed to belong to England, and by that power grants were made from time to time to companies and to individual proprietors. Under the charters and patents thus granted, settlements were made and local governments were established. The colonies all acknowledged allegiance to the mother country, while they had no direct political connection with one another.

Provincial or Royal Governments.—The colonial governments have been described by most writers, following the division given by Blackstone, as of three kinds: provincial, proprietary, and charter. The provincial governments, which were often called royal, had a governor and council appointed by the Crown, and a legislature whose upper house was the council, and whose lower house was elected by the people. The governor had a negative upon all the proceedings of the legislature, and could also prorogue or dissolve it at pleasure. Laws might be enacted not repugnant to the laws of England, and subject to the ratification of the Crown. The governor, with the advice and consent of the council, could establish courts and appoint judges and other officers.

Proprietary Governments. — In the proprietary governments, the proprietors appointed the governors, and it was under their authority that legislative assemblies were convened. While the proprietors thus exercised those prerog-

[1] This right was held among the European nations to be a sufficient foundation on which to rest their respective claims to the American continent. The title from discovery was good against other nations, but it did not of itself extinguish the claim of the Indian occupant. It was held, however, that discovery by a nation gave exclusive right to extinguish the Indian title either by purchase or conquest. The government of the United States has uniformly acted on the same rule.

atives which in the royal governments were exercised by the Crown, the sovereignty of the mother country was, nevertheless, to be strictly maintained.

Charter Governments.—In the charter governments, the people had much more political power. Their relation to England was more like that of the citizens of one of our States to the nation, while that of the people in the royal governments was more like that of the people in one of our Territories. The charter granted to Massachusetts by Charles I. gave power to elect annually a governor, deputy governor, and eighteen assistants. Four "great and general courts" were to be held every year, to consist of the governor or deputy governor, the assistants, and the freemen. These courts were authorized to appoint such officers as they should think proper, and also to make such laws and ordinances as to them should seem meet, provided they were not contrary to the laws of England. Under the charter granted in 1691 the governor was appointed by the Crown.[1]

Connecticut and Rhode Island formed governments for themselves, the provisions of which were afterward secured to them in charters granted by Charles II. soon after his restoration to the throne. The people of these colonies, by the express words of their charters, were entitled to the privileges of natural-born subjects, and invested with all the powers of government,—legislative, executive, and judicial. The only limitation to their legislative power was that their laws should not be contrary to those of England.[2]

"The king and parliament claimed the right to alter and revoke these charters at pleasure; but the colonists, on the other hand, denied this right, and claimed them to be solemn compacts between them and the Crown, irrevocable unless forfeited by some act of the grantees. This was a continual source of contention between the parent country and the

[1] Pitkin's *Pol. and Civ. Hist. U. S.*, I., pages 36, 120.

[2] Pitkin, I., page 54.

charter colonies, and was one of the causes which finally produced a separation between the two countries." [1]

The people of these two colonies were indeed so well satisfied with their charters, granted in 1662 and 1663, that they continued to live under them long after they had ceased to be colonies, and had become States of the American Union. Connecticut did not form a State constitution till 1818, nor Rhode Island till 1842.

The Colonies under Each Government.—The colonies which had charter governments were, as we have seen, Massachusetts, Rhode Island, and Connecticut.

The royal, or provincial, governments were those of New Hampshire, New York, Virginia, and Georgia; to which were added New Jersey in 1702, and the Carolinas in 1729, all which had previously been under proprietary governments.

The colonies that continued under proprietary governments till the Revolution were Pennsylvania, Maryland, and Delaware.

It has been seen that each of the colonies exercised some of the powers of government, while none claimed to be independent of England. For internal regulations, the colonial legislatures regarded themselves as having full authority. While having no direct political connection with one another, they acknowledged a common allegiance to the Crown. They were fellow-subjects, and in many respects one people. Every colonist could become an inhabitant of any colony. They enjoyed the rights and privileges of British subjects, and claimed a total exemption from all taxation not imposed by their own representatives. In the Plymouth Colony, for the first twenty years, all the freemen met in "general court" and participated in making laws. In 1639, a house of representatives was substituted for the whole body of freemen. In Virginia, a general assembly, composed of representatives from the various plantations, was called in 1619. This was the first

[1] Pitkin, I., page 55.

representative legislature that ever sat in America. Eventually, all the colonies elected one or both of the branches of their provincial legislatures.

The Union of 1643.—The first union among any of the colonies was formed in 1643. It embraced Massachusetts, Plymouth, Connecticut, and New Haven, under the name of "The United Colonies of New England." Their object was to defend themselves against the Indians, and also to resist the claims and encroachments of the Dutch.[1] This union continued till 1686.

Proposed Union of 1754.—In June, 1754, commissioners from seven of the colonies, viz., Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland, met in Albany at the request of the lords commissioners for trade. The objects were to "confirm and establish the ancient friendship of the Five Nations," and to consider whether the colonies would "enter into articles of union and confederation with each other for the mutual defense of His Majesty's subjects and interests in North America as well in time of peace as war."[2] With reference to this end the British Secretary of State had suggested that a plan of union among the colonies should be formed. At this meeting, after the adoption of a resolution that a union of the colonies was absolutely necessary for their preservation, a committee was appointed, consisting of one member from each colony, to report a plan of union. One proposed by Dr. Franklin, who was a member of the committee, was finally adopted by the convention.

It provided for a general government of all the American colonies, to consist of a president-general to be appointed by the Crown, and a grand council of delegates, to be chosen every three years by the colonial assemblies. The president and council were to regulate all affairs with the Indians, to make new settlements on lands purchased of the Indians, and

[1] Pitkin, I., page 50. [2] Frothingham's *Rise of the Republic*, page 132.

govern such settlements, to raise soldiers, build forts, and equip vessels for guarding the coast and protecting the trade. For these purposes, they were to make laws and levy such duties and taxes as they might deem just. The president was to have a negative on all laws and acts of the council, and to see that the laws were executed.

This plan was adopted by the convention, all the delegates voting for it except those from Connecticut. But it never went into operation, having failed to obtain the approval either of the colonies or of the mother country. "It had the singular fate of being rejected in England because it left too much power in the hands of the colonists, and it was disapproved in America because it transferred too much power into the hands of the Crown." [1]

Congress of 1765.—In September, 1765, a Congress of delegates was held at New York. This was in consequence of the passage of the Stamp Act by the British Parliament in March of the same year. That body had determined to raise a revenue from the colonies by taxation, although the colonists most vehemently protested against it. The passage of the Stamp Act, which required all legal documents to be on stamped paper furnished by the British government, excited universal alarm in the colonies. The colonial assembly of Virginia, at a session held soon after the news reached America, adopted resolutions of the most decided character. These resolutions were moved and supported by the celebrated Patrick Henry. When, in the heat of debate, he exclaimed, "Cæsar had his Brutus, Charles I. his Cromwell, and George III."—he was interrupted by the speaker and others with the cry of "treason." Pausing a moment, and fixing his eye on the speaker, he added—"may profit by their example; if this be treason, make the most of it."

Meanwhile, Massachusetts had voted that it was desirable that a Congress of delegates from all the colonies should be

[1] Pitkin, I., page 145.

held. Accordingly, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina elected commissioners, who met at New York, as stated above. New Hampshire approved of the Congress, but from the peculiar situation of the colony it was judged not prudent to send delegates. Virginia, North Carolina, and Georgia were not represented because the governors of those colonies refused to call special assemblies for the appointment of delegates.

Action of the Congress. — "This was the first general meeting of the colonies for the purpose of considering their rights and privileges, and obtaining a redress for the violation of them on the part of the parent country."[1] They adopted a declaration of rights and grievances, which asserted the claim of the colonists to all the inherent rights and liberties of subjects within the kingdom of Great Britain; "that it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally or by their representatives."

The First Continental Congress. — The Stamp Act was subsequently repealed, but other taxes and duties were imposed quite as obnoxious to the colonies. Their efforts to obtain redress being unsuccessful, it became obvious that they must form a closer union for their own protection.[2] In 1774, Massachusetts recommended the assembling of a Continental Congress to deliberate upon the state of public affairs. The recommendation was favorably received, and on the 5th of September a Congress of delegates from twelve colonies assembled at Philadelphia. Of these, some were appointed by the popular branch of the colonial assembly, while others were elected by conventions of the people. Georgia

[1] Pitkin, I., page 180.

[2] The Stamp Act was repealed March 18, 1766. Other taxes were imposed June 29, 1767. The "Boston Massacre" occurred March 5, 1770. Tea destroyed, December, 1773. Boston port bill passed, March 31, 1774.

the youngest of the colonies, was not represented. This is known as "the First Continental Congress."

Among the distinguished members of this Congress were John Adams and Samuel Adams of Massachusetts, Roger Sherman of Connecticut, John Jay of New York, Peyton Randolph, Richard H. Lee, Patrick Henry, and George Washington of Virginia. Peyton Randolph was chosen president. The first resolution adopted was, "That in determining questions in this Congress each colony or province shall have one vote; the Congress not being possessed of, or at present able to procure, proper materials for ascertaining the importance of each colony." This rule of equal suffrage, established because the Congress did not possess the information requisite for establishing a more equitable one, remained in force until the present Constitution went into operation in 1789.

The Work of the Congress.—Addresses to the King, to the people of Great Britain, to the inhabitants of the colonies represented, and to the inhabitants of the province of Quebec, were all drawn up with great ability, and were spoken of by Lord Chatham in terms of the highest admiration. After recommending that another Congress should be held on the 10th of May following, provided that a redress of grievances was not previously obtained, this Congress adjourned on the 26th of October. That the measures adopted, if supported by the American people, would produce a redress of grievances, was the conviction of a majority of the members of the Congress.[1]

The Second Continental Congress.—The breach between Great Britain and the colonies having become wider, delegates were appointed to meet in Philadelphia, May 10th, 1775, agreeably to the recommendation of the Congress of 1774. Some of these were chosen by conventions of the people, and some by the colonial legislatures, as in the case of the previ-

[1] Pitkin, I., page 301.

ous Congress. With scarcely an exception, the delegates of 1774 were reappointed in 1775. As before, twelve colonies were represented. A delegate also was present from a single parish in Georgia, and in July a convention was held in that colony, which voted to accede to the general association, and appointed delegates to the Congress. This Second Continental Congress continued its session, with occasional adjournments, till March, 1781; there were then yearly sessions till 1789. Sometimes, however, the different sessions are spoken of as new Congresses; so that the body which adjourned in 1789 is called the Fourteenth Continental Congress.

Hostilities in Massachusetts.—Before the Second Continental Congress assembled on the 10th of May, hostilities had been commenced by the British troops under General Gage. One of the first items of business brought before the body was a letter from the provincial congress of Massachusetts, giving an account of the battles of Lexington and Concord, April 19th, with the action of that colony in relation thereto, and requesting the direction and assistance of the Congress. In this letter is the following suggestion: "With the greatest deference, we beg leave to suggest that a powerful army on the side of America hath been considered by this Congress as the only means left to stem the rapid progress of a tyrannical ministry."[1] The Continental Congress at once resolved itself into a committee of the whole to take into consideration the state of America, and referred this letter from Massachusetts to that committee.

Washington appointed General.—Hostilities having already commenced, the necessities of the case compelled this Continental Congress to take measures to put the country into a state of defense, and soon it assumed a virtual control over the military operations of all the colonies. An army was organized, and on the 15th of June, George Washington, a delegate from Virginia, was unanimously elected general of all the

[1] Jour. Cont. Cong., I., page 77.

forces. His commission styled him the General and Commander in Chief of the Army of the United Colonies. This was the first occasion on which the style, "The United Colonies," was adopted; it continued to be used till the Declaration of Independence substituted the name, "The United States."

Government Assumed by Congress.—The action of Congress in providing for raising an army and appointing a commander in chief was in accordance with the general expectation of the colonies. Congress thus assumed the defense of the country. It created a continental currency by issuing bills of credit. It established a treasury department, and organized a general post office, Dr. Benjamin Franklin being the Postmaster-General. In answer to the applications from various colonies for advice as to their local governments, Congress recommended that such forms of government be established as would best secure good order during the continuance of the dispute between Great Britain and the colonies. This advice manifestly contemplated the establishment of provisional governments only. This was in November and December, 1775.

The Question of Separation.—But the question of separation began to be discussed. On the 22d of April, 1776, the convention of North Carolina empowered its delegates in Congress "to concur with those in the other colonies in declaring independency. This, it is believed, was the first direct public act of any colonial assembly or convention in favor of the measure."[1] On the 15th of May the convention of Virginia went further, and unanimously *instructed* its delegates in Congress "to propose to that respectable body to declare the United Colonies free and independent States, absolved from all allegiance or dependence upon the Crown or Parliament of Great Britain." In accordance with these instructions, Richard Henry Lee, one of the delegates from Vir-

[1] Pitkin, I., page 360.

ginia, submitted a resolution declaring "that the United Colonies are and ought to be free and independent States; that they are absolved from all allegiance to the British Crown; and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved." This was on the 7th of June. On the next day it was debated in committee of the whole.

"No question of greater magnitude," says Mr. Pitkin, "was ever presented to the deliberation of a deliberative body, or debated with more energy, eloquence, and ability."[1]

The resolution was discussed again in committee of the whole on the 10th, and adopted. The committee recommended that the further consideration of the resolution be postponed till the 1st of July, but meanwhile that a committee be appointed to draft a declaration of independence. This committee consisted of Thomas Jefferson of Virginia, John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, and Robert R. Livingston of New York.

The Declaration of Independence.—The postponement was immediately followed by proceedings in the colonies, most of which either instructed or authorized their delegates in Congress to vote for the resolution of independence; and on the 2d day of July that resolution, which had before been agreed to in committee of the whole, was adopted by Congress itself. The committee that had been instructed to prepare the declaration, had reported on the 28th of June, and on the 4th day of July that paper was adopted.

After citing reasons for the dissolution of the political bands which had connected them with Great Britain, the Declaration concludes: "We, therefore, the representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the

[1] Pitkin, I., page 362.

authority of the good people of these colonies, solemnly publish and declare that these United Colonies are, and of right ought to be, FREE and INDEPENDENT STATES."

This was the beginning of the nation. Whether it could maintain its independence, thus boldly declared, was to be decided by the sword. Should the people fail in the bloody struggle, they would never be known as a nation upon the page of history. Should they succeed, their national existence would date from the Fourth of July, 1776.

This Declaration of Independence was not the work of States, for no States existed. It was the *people* of the thirteen United Colonies who had, through their representatives, declared themselves absolved from their allegiance to Great Britain. The nation and the States were born on the same day. Hitherto, there had been colonies and the mother country, to which all the colonists acknowledged allegiance. Now, the sovereignty was no longer in Great Britain, but in the people themselves, who claimed to be a separate political community; and the individual colonies had become States. From that day the nation itself, through Congress, exercised all the functions of government. There was a real government, though as yet no written constitution; and the relations of the States to the general government were in substance the same as they are now.

CHAPTER III.

THE ARTICLES OF CONFEDERATION—THEIR FAILURE—THE CONVENTION TO FORM A CONSTITUTION.

Articles of Confederation.—Soon after the Declaration of Independence was made, a committee, previously appointed, reported a draft of the Articles of Confederation. These were debated from time to time, and, after several modifications, were finally agreed to by Congress, November 15th, 1777. They were to become binding when ratified by all the States. Ten States ratified them in July, 1778; New Jersey, November 26th; and Delaware, February 22d, 1779. Maryland withheld her approval till March 1st, 1781. This was nearly five years after the Declaration of Independence. During this time the war had been carried on and all the affairs of the nation had been conducted by Congress. A treaty had been made between France and the United States, which was concluded at Paris, February 6th, 1778, and ratified by Congress May 4th of that year. Though that was before the adoption of the Constitution or of the Articles of Confederation and before the formal organization of the government, Congress by these acts exercised some of the highest functions of sovereignty. They show that Congress was *de facto* the sovereign power in matters of general concern to the whole country. The surrender of Cornwallis, which virtually closed the war, took place on the 17th of October, 1781, about six months after the adoption of the Articles of Confederation.

Jealousy of the States.—These Articles were the result of the first effort to form a central government. Such a gov-

ernment had indeed existed from the time of the Declaration of Independence, but it was revolutionary, and Congress had governed by the common consent of the people. In attempting to draw the line between the powers to be exercised by the States on the one hand and the general government on the other, State influence was strongly predominant. The colonies had been independent of one another, and the encroachments of Great Britain had led to the revolution. A central government at home would in their view take the place of that of the mother country, and it was not strange that their jealousy of England should in some measure be transferred to their own general government. Little power was confided to Congress, and this related principally to war.

The Articles were as erroneous in theory as they were inefficient in practice. The Declaration of Independence was made in the name of the *people* of the United States. The first sentence refers to them as "one people" that had found it necessary to dissolve the political bands which had connected them with another people, and to assume among the powers of the earth the separate and equal station to which they were entitled. The Constitution speaks the same language: "We, the people of the United States, do ordain and establish this Constitution for the United States of America." But the Articles of Confederation do not purport to come from the people. They were the work of the States. The instrument is styled "Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay," etc. It was drawn up and adopted by Congress, and sent to the States for ratification.

Provisions of the Articles. — The Articles provided for one House of Congress, to be composed of delegates appointed annually by the several States, as each should direct, no State to be represented by more than seven or less than two, and no person being capable of serving as a delegate more than three years in six. Each State was to pay its own del-

egates, and could recall them at pleasure. The voting was to be by States.

Congress was invested with power as to war and peace, treaties and alliances. Congress could decide, on appeal, disputes between States, could regulate the alloy and value of money, had charge of all postal matters, etc., etc. ; but no important action could be taken without a vote of nine States—two thirds of the whole.

No executive department was provided, and no judiciary. Taxes were to be apportioned among the States, but Congress had no authority to levy them. Commerce was in the control of the States. Each State could lay duties and imposts. Congress had no power to enforce its own measures.

Defects as to Taxation.—"In the very modes of its operation there was a monstrous defect, which distorted the whole system from the true proportions and character of a government. It gave to the Confederation the power of contracting debts, and at the same time withheld the power of paying them. It created a corporate body, formed by the Union and known as the United States, and gave to it the faculty of borrowing money and incurring other obligations. It provided the mode in which its treasury should be supplied for the reimbursement of the public credit. But over the sources of that supply, it gave the government contracting the debt no power whatever. Thirteen independent legislatures granted or withheld the means which were to enable the general government to pay the debts which the general constitution had enabled it to contract, according to their own convenience or their own views and feelings as to the purposes for which those debts had been incurred." [1]

Other Defects.—"By this political compact, the United States in Congress have exclusive power for the following purposes, without being able to execute one of them. They may make and conclude treaties, but can only recommend

[1] Curtis's *History of the Constitution*, I., page 181.

the observance of them. They may appoint ambassadors, but can not defray even the expenses of their tables. They may borrow money in their own name on the faith of the Union, but can not pay a dollar. They may coin money, but can not purchase an ounce of bullion. They may make war, and determine what number of troops are necessary, but can not raise a single soldier. *In short, they may declare everything but do nothing.*" [1]

As each State paid its own delegates in Congress, the smaller the number the less the expense. Oftentimes a State would have no representative. The treaty of peace, signed September 3d, 1783, could not be ratified till January 14th, for want of representatives, and then there were but twenty-three members present. In April of that year there were present twenty-five members from eleven States, nine being represented by two each. Three members, therefore—one eighth of the whole—could negative any important measure.

The treaty of peace was made by the United States with Great Britain, but Congress could not enforce its provisions. Various articles were constantly violated by the States, and Congress could not prevent it. Great Britain declared her readiness to carry the treaty into effect when the United States would do the same.

As the general government could not carry out its own treaties with foreign powers because of the refusal of the States, so it could not protect a State against insurrection or rebellion. The outbreak in Massachusetts in 1786, known as Shays's Insurrection, which embraced a fifth of the inhabitants in several of the most populous counties, caused great alarm through the country. Armed men surrounded the court-houses, and finally the insurgents were embodied in arms against the government. The national government was powerless to aid the State; the Articles of Confederation gave Congress no authority in such a case.

[1] American Museum, 1786, page 270, quoted by Story.

Language of Washington.—The weakness of this league of States was made abundantly manifest. It is not surprising that Washington should write as he did to a member of Congress: "You talk, my good sir, of employing influence to appease the present tumults in Massachusetts. . . . *Influence* is not *government*. Let us have a government by which our lives, liberties, and properties will be secured, or let us know the worst at once."[1] The weakness of the Confederation, especially in its relation to the revenue, had been early seen by Washington. He saw "that to form a new constitution, which would give consistency, stability, and dignity to the Union, was the great problem of the time."[2]

Views of Hamilton.—So, too, Mr. Hamilton, without doubt the ablest statesman of his age, was convinced before the Articles of Confederation went into operation that they could never answer the purposes of government. As early as 1780, he sketched the outlines of a system of government for the United States, embodying almost every feature of our present Constitution.[3]

Action of Massachusetts.—In May, 1785, Governor Bowdoin of Massachusetts suggested the appointment of special delegates from the States to define the powers with which Congress ought to be invested. A resolution was accordingly passed by the legislature of Massachusetts, declaring the Articles of Confederation inadequate, and calling a convention of delegates from all the States.[4] But the matter was not brought before Congress by the members of that body from Massachusetts.

The Annapolis Convention of 1786.—In January, 1786, the legislature of Virginia appointed commissioners to meet with those from other States to consider the subject of trade, with reference to a uniform system of commercial regulations. The meeting was held in September, at Annapolis, Maryland.

[1] Curtis, I., page 274.
[2] Ibid, page 202.
[3] Ibid, I., page 204.
[4] Bancroft's *Hist. Const.*, I., page 190.

Only five States were represented ; viz., New York, New Jersey, Pennsylvania, Delaware, and Virginia ; but great results followed from the convention. The committee representing so few States did not enter upon the proper business of the convention, but prepared a report, drawn up by Mr. Hamilton, expressing their unanimous conviction that a general convention should be called to devise such provisions as might render "the constitution of the federal government adequate to the exigencies of the Union."

Action of Congress.—Hamilton's report, though addressed to the States represented, was also sent to Congress as well as to the other States. That body, on the 21st of February, 1787, adopted the following resolution :

"*Resolved*, That, in the opinion of Congress, it is expedient that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the federal constitution adequate to the exigencies of government and the preservation of the Union."

In accordance with this recommendation, all the States but Rhode Island appointed delegates to meet at Philadelphia at the time specified, Monday, May 14th, 1787. The organization was not, however, effected, for want of a quorum, till the 25th, when George Washington was unanimously elected President.

It is worth noticing that it was interstate commerce which brought about the Annapolis convention and the convention that framed the Constitution. This is the most important domestic subject committed to the control of the national government. Its importance has grown rather than decreased since the adoption of the Constitution.

The Convention.—The Philadelphia Convention contained many very eminent men. George Washington, Alexander

Hamilton, James Madison, Benjamin Franklin, Rufus King, Roger Sherman, James Wilson, Gouverneur Morris, and Edmund Randolph would have been distinguished in any assembly. There were fifty-five members in all, most of whom were illustrious for their character and public services. Dr. Franklin had been a member of the Convention of 1754. Three had been present at the Congress of 1765. Seven had been members of the First Continental Congress. Eight were among the signers of the Declaration of Independence. Eighteen were at the same time delegates to the Continental Congress; and of the whole number there were only twelve who had not sat at some time in that body.[1]

Work to be Done.—If the Convention was composed of extraordinary men, it had before it extraordinary work. They were to form a complete system of republican government, with no example for their guidance. This was their real work, though this was not distinctly present to the minds of all of them at first. Some were thinking only of amending the Articles of Confederation; but Hamilton and Madison, and others, were prepared to enter at once upon the construction of the organic law for a supreme general government, without regard, either in form or substance, to the existing Articles of Confederation.[2]

Virginia Plan.—Soon after the organization of the Convention, Mr. Randolph submitted a series of resolutions, embodying the views of the Virginia delegates as to the government desirable to be established. Four delegates from that State, Washington, Madison, Randolph, and Mason, believing that the confederacy had entirely failed as a constitution of government, had agreed upon a plan for a national government, which had been drawn up by Madison, and altered and amended by their joint consultations. To Randolph, at that time governor of the State, was assigned the office of bringing forward the outline, which was to be known

[1] Hildreth's *Hist. U. S.*, III., page 483. [2] Towle's *Analysis*, page 31.

as the Virginia plan.[1] Mr. Pinckney, of South Carolina, submitted on the same day a draft of a Constitution. All these were referred to the committee of the whole, and the discussion was commenced. The first resolution adopted in committee of the whole was the first of the series offered by Mr. Randolph, somewhat modified. It was as follows : "*Resolved,* That it is the opinion of this committee that a national government ought to be established, consisting of a supreme Legislative, Judiciary, and Executive."

This was a very important resolution. It was a recognition, in the beginning, of the fundamental principle of the separation of the three functions of government and the adoption of it as the basis of the new constitution.

New Jersey Plan.—On the 13th of June, the committee reported a series of resolutions to the Convention. On the 15th, Mr. Patterson, of New Jersey, offered resolutions expressing the views of those who favored amending the Articles of Confederation and opposed the formation of a new constitution. The whole subject was then again referred to the committee of the whole, and debated till the 19th, when the committee reported adversely to Mr. Patterson's plan, and submitted the resolutions formerly reported. These resolutions were debated in the Convention from day to day, some great questions, like that of suffrage in the Senate and House of Representatives, being occasionally referred to a special committee.

Committee of Detail.—On the 23d of July it was voted to appoint a Committee of Detail, to whom should be referred the proceedings of the Convention, except what related to a supreme executive, for the purpose of reporting a constitution embodying what had been agreed upon. This committee, appointed by ballot the next day, consisted of Messrs. Rutledge of South Carolina, Randolph of Virginia, Gorham of Massachusetts, Ellsworth of Connecticut, and Wilson of Pennsylvania. The propositions of Mr. Patterson and of Mr.

[1] Bancroft, II., 6.

Pinckney were also referred to this committee. On the 26th, after some instructions to the Committee of Detail, the Convention adjourned to the 6th of August.

Committee on Style.—The Committee of Detail reported at the time appointed, and their draft was considered by the Convention till the 8th of September, when a committee of five was appointed to revise the style and arrange the articles. This Committee on Style consisted of Messrs. William Samuel Johnson of Connecticut, Alexander Hamilton of New York, Gouverneur Morris of Pennsylvania, James Madison of Virginia, and Rufus King of Massachusetts. On the 12th, they reported the Constitution: also a letter to Congress to accompany the Constitution.[1]

The Constitution Accepted by the Convention.—The discussions were continued until Saturday, the 15th of September, when the Constitution, as amended, was agreed to, all the States concurring.[2] It was then ordered to be engrossed, and on the Monday following it was signed by the members, after striking out 40,000 as the basis for representation, and inserting 30,000. The form of signature was this: "Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord 1787, and of the Independence of the United States of America, the twelfth."

Two of the three New York delegates having left the Convention, that State was technically not present, though Alexander Hamilton's signature was attached. Mr. Gerry of Massachusetts and Messrs. Randolph and Mason of Virginia did not sign the Constitution, though it was signed by a majority of the delegates from each of those States.

[1] "The final draft of the instrument was written by Gouverneur Morris, who knew how to reject redundant and equivocal expressions, and to use language with clearness and vigor; but the Convention itself had given so minute, long-continued, and oft-renewed attention to every phrase in every section, that there scarcely remained room for improvement except in the distribution of its parts."—*Bancroft*, II., 207. *Curtis*, I., 444.

[2] The votes had been by States, as in the Continental Congress.

CHAPTER IV.

The Constitution of the United States.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The Enacting Clause not a Preamble. — The first sentence of the Constitution is often called a "preamble." But that term was not applied to it by those who framed the Constitution, and is not found in the original manuscript. It is not a preamble, either in form or substance, but is the enacting clause—an integral part of the Constitution itself. A preamble gives reasons why a resolution should be adopted or an enactment made, but it is no part of the resolution or enactment. The enacting clause, on the contrary, is mandatory. No other part of a statute is more important. Such is the introductory sentence of the Constitution. "We the people of the United States," for certain purposes, "do ordain and establish this Constitution for the United States of America."

"Here is no transient compact between parties: it is the institution of government by an act of the highest sovereignty; the decree of many who are yet one; their law of laws, inviolably supreme, and not to be changed except in the way which their forecast has provided." [1]

[1] Bancroft, II., 208.

We have here (1) the authority—We, the people of the United States; (2) the ends for which the Constitution is made, in six particulars; (3) the explicit ordaining of this Constitution, including this introductory clause; (4) the nation for whom it is made—the United States of America.

The People Ordain the Constitution.—The Constitution was ordained by the people of the United States as a nation. The language presupposes the unity, the nationality, and the sovereignty of the people. The nation began to exist on the 4th of July, 1776. The people then cast off their allegiance to Great Britain and became a separate nation, possessing the rightful sovereignty of the country. They became united in a national corporate capacity, as one people, and took for their national designation the name, the "United States of America." From that day to the present they have been known to the world by this name. Wherever in the Constitution these words occur, or the briefer form, the "United States," they signify the nation as a whole; wherever the word "States" occurs it signifies the States considered separately, or as distinguished from the nation.

The purposes for which the Constitution was formed are admirably stated: "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

An Adequate Government Provided.—The Congress of the Confederation called the Constitutional Convention for the purpose of forming "a firm national government . . . adequate to the exigencies of government and the preservation of the Union."[1] The Union under the Confederation was imperfect and unsatisfactory, and the framers of the Constitution determined to submit to the people an instrument which should be more efficient than the Articles of Confederation. It was a union of the people of all parts of the

[1] Jour. Cont. Cong., XII., page 14.

country, as constituting one nation, which they wished to secure, instead of a mere league of States. Under the Articles of Confederation there was no distinct judicial department, as there was no executive, while the new Constitution provided for both. The domestic tranquillity had been greatly interfered with because of the power given to the individual States; the central government having little more than the power to recommend. The national government would insure this domestic tranquillity. The words "common defense" and "general welfare" were introduced near the close of the Convention, but they met with no opposition. No language could be more comprehensive than this, "to promote the general welfare."

For these various purposes the people of the United States ordain this Constitution for themselves. It is the organic, fundamental law for the whole people of the country whose corporate name is the United States of America. The nation, as such, establishes this Constitution, making it sufficient for all the exigencies of government. As the organic law of the nation, it is everywhere supreme. Subordinate governments may continue and new ones be established, but always in conformity with this.

The Seven Articles.—The Constitution contains seven articles, which are subdivided into sections. In the original there are no headings to the articles. Both articles and sections are numbered.

Article 1st relates to the legislative power.

Article 2d, to the executive power.

Article 3d, to the judicial power.

Article 4th, to various subjects.

Article 5th, to the mode of amending the Constitution.

Article 6th, to the validity of debts contracted before the adoption of the Constitution, and to the supremacy of the Constitution.

Article 7th, to the mode of its ratification.

Besides these seven articles, fifteen amendments have been made to the Constitution, which are as binding as the original articles.

ARTICLE I.

THE LEGISLATIVE DEPARTMENT.

Sec. 1.—*All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

Congress in Two Houses.—Under the Confederation, the whole governmental authority was vested in Congress. There was no executive department, and no judicial. The first resolution adopted in the Constitutional Convention was that a national government ought to be formed, consisting of supreme legislative, executive, and judicial departments. Most legislative bodies have two houses. This is true of all the existing State governments, and was true of all at the time the Constitution was framed, except Pennsylvania and Georgia, which had but one each.[1] The Continental Congress had but one house. While there is a general distribution of powers among the three great departments of the government, the exercise of these powers is not absolutely exclusive. We shall see that the President has a qualified veto on legislation, and that the Senate sometimes acts as a court, and sometimes transacts executive business.

Sec. 2, Clause 1.—*The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.*

Term of Representatives.—Under the Confederation, the members of Congress were chosen annually, and as the legis-

[1] The constitution of Georgia, adopted in 1789, provided for two houses; as did that of Pennsylvania, adopted in 1790.

lature of each State should direct. They could also be recalled. The Constitution makes the term of service of the representatives two years, and requires that the election shall be by "the people." A parliament of Great Britain expires at the end of seven years unless sooner dissolved.

By Whom Chosen.—Those who vote for representatives to Congress must have the qualifications requisite to enable them to vote for members of the lower house of the State legislature, but it is not clear by whom these qualifications are to be prescribed. The common opinion has been that the State prescribes them. The Constitution says simply that the qualifications must be the same ; so that whoever can vote for the State representative can vote for the national one also, and *vice versa*. The Constitution does say that representatives to Congress shall be elected by the *people*, thus virtually saying that the members of the most numerous branch of the State legislature shall also be elected by the people. Under the Articles of Confederation, the delegates in all the States but two were elected by the legislature.[1]

Clause 2.—*No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.*

The Qualifications of a Representative relate to age, citizenship, and inhabitancy ; he must be twenty-five years old, a citizen of the United States for seven years, and an inhabitant of the State where he is elected. It has been decided that the States can not prescribe additional qualifications.

According to the Articles of Confederation, no person could be a representative in Congress more than three years in six ; and each State prescribed the qualifications of its own representatives. In the British Parliament the required

[1] Federalist, No. 40.

age is twenty-one years; and the same age is required in the different States of our Union. The representative must have been a citizen of the United States for seven years. The United States is here spoken of as *one* country,—a nation. It would be nonsense to say a representative must have been seven years a citizen of the thirteen States.

Residence of a Representative.—The representative must be an inhabitant of the State in which he is chosen, but not necessarily of the district. In Great Britain, members of Parliament often represent boroughs and cities other than those in which they live. Some cases have occurred in this country.[1] The Constitution does not require the representative to be a voter. A State qualification for suffrage might exclude from the polls one who possessed the requisites for a representative. If a State should come into the Union through conquest or purchase, the inhabitants becoming citizens thereby, the seven years' citizenship would not be insisted on. This is a form of naturalization.

Clause 3.—*Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and*

[1] Hon. O. B. Potter, a member of the 48th Congress from the city of New York, represented a district in which he did not reside. The same was true of Hon. S. S. Cox. In England, the members of the House of Commons were formerly required to reside in the districts for which they were chosen. But this was for a long time disregarded in practice, and repealed by statute in the time of George III.—*Story*, § 619.

until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Voting in the Continental Congress.—When the Continental Congress commenced its session, September 5th, 1774, the following resolution was adopted:

"*Resolveā,* That in determining questions in this Congress, each colony or province shall have one vote: the Congress not being possessed of, or at present able to procure, proper materials for ascertaining the importance of each colony."

"As if foreseeing the time when population would become of necessity the basis of congressional power, they inserted, in the resolve determining that each colony should have one vote, a caution that would prevent its being drawn into precedent."[1]

Discussion in the Convention.—The Articles of Confederation followed the same rule, and thus this method of voting prevailed till the Constitution went into operation in 1789. When the Convention decided to form two legislative bodies, the question of voting came up. Some were in favor of an equal representation by States in each branch, while others favored a popular basis, and a proportionate representation in each House. In general, the larger States wished the representation to be in proportion to the importance of the State, while the smaller States favored an equality, as in the Continental Congress.

Decision as to Representatives.—It was first decided that in the House of Representatives suffrage should *not* be like that under the Confederation, but according to some equitable ratio of representation. The question then arose as to the

[1] Curtis, I., page 17.

basis of that ratio. Should the different States send representatives in proportion to their population or their wealth? And if according to population, who were the people? Should the number of representatives be according to the number of *voters,* or as the *white* population, or as the *free* population, or as the *whole?* It was decided that the representation from the States should be "according to their respective numbers"; that is, as the whole population, but that only three fifths of the slaves should be counted.

The Three Fifths Rule.—According to the Articles of Confederation, the votes were by States—each State, whether large or small, having one vote. But the quotas for the support of the general government were as the values of real estate in the several States. In 1783, the Continental Congress recommended to the States to amend the Articles, so that each State should pay "in proportion to the whole number of free inhabitants, and three fifths of the number of all other inhabitants of every sex and condition, except Indians not paying taxes in any State."[1] The Convention followed, both as to representation and direct taxes, this proposed amendment, though it was never ratified by the States; and this was the origin of the three fifths rule.

The adoption of this rule was favorable to the slave States as it increased the number of their representatives; it was unfavorable as it increased their proportion of direct taxes. The advantage was greater than the disadvantage, however, as they enjoyed the increased number of representatives continually, while direct taxes have been levied but five times since the adoption of the Constitution.

Slavery having been abolished in 1865 by an amendment to the Constitution, all the colored population must be counted in determining the number of representatives from a State. If this class of the population could not vote, the Southern States, by the original constitution, would have nearly twice

[1] Jour. Cont. Cong., VIII., page 123.

as many representatives, in proportion to the number of voters, as the Northern States. To remedy this inequality, the Fourteenth Amendment provides that if the right to vote is denied to any class of citizens, the basis of representation shall be reduced in proportion.

Basis of Representation.—The basis of representation was reported at 40,000 by the committee, and so remained till the last day of the Convention, when it was changed to 30,000, General Washington himself advocating the change. This is said to have been the only occasion on which he entered into the discussions of the Convention.

Question in the First Congress.—A question arose early in Washington's administration as to the construction of this clause. Should the number of representatives be determined by dividing the *whole population* of the United States by the number taken as the basis of representation, or by dividing the *population of the respective States* by that number, and taking the sum of the quotients? The former method would give the largest number of representatives, and was adopted by Congress in the bill first passed. But the bill was returned by President Washington as conflicting with the language of the Constitution. Congress yielded to the judgment of the President, and the method then adopted of dividing the population of each State by the basis of representation continued till 1842.

The bill of 1790, as passed, provided for 120 representatives, the basis of representation being 30,000. Dividing the population of each State by 30,000 would have given only 112. A new bill was passed and approved in 1792, making the number of representatives 105, according to a ratio of one member to 33,000 persons in each State. Dividing the whole population by 33,000 would have given 110.

Plan of 1842.—In 1842 the law provided for fractions of the basis. The act of Congress of that year gave one representative for every 70,680 persons and for a fraction greater than one half of that number.

Plan of 1850.—After the census of 1850 another change was made. Hitherto the basis, or ratio, of representation had been first determined, and from that the number of representatives. In 1850 the method was reversed. The number of representatives was first agreed upon; then the whole population was divided by that number, and the quotient was the ratio or basis. To find the number of representatives to which each State was entitled, the population of each State was divided by this ratio. Since this division was rarely if ever even, the aggregate of the remainders was several times the ratio, and the aggregate of the quotients was less than the number of representatives first agreed upon. To make up the whole number, an additional representative was allotted to each of the States having the largest remainders. By the provisions of the law of 1850 the apportionments which went into effect in 1853 and 1863 were made by the Secretary of the Interior. In 1872, 1882, 1891, and 1901, Congress itself made the apportionment.

Plan of 1911. — Reverting to the plan of 1842, Congress made the apportionment of 1911 by giving one representative for every 211,877 persons, or fraction thereof greater than half.

The first enumeration of the people was made in 1790, the second in 1800, and so on. After the census returns have been made, Congress provides by law for the representation, to take effect March 4th of the third year after the decennial year.

The Number of Representatives for the different decades, and the number of inhabitants for a representative, are:

Period.	Number of Members.	Ratio of Population.	Period.	Number of Members.	Ratio of Population.
1789–1793	65	———	1853–1863	234	93,423
1793–1803	105	33,000	1863–1873	241	127,381
1803–1813	141	33,000	1873–1883	292	131,425
1813–1823	181	35,000	1883–1893	325	151,911
1823–1833	212	40,000	1893–1903	356	173,901
1833–1843	240	47,700	1903–1913	386	194,182
1843–1853	223	70,680	1913–1923	435	211,877

The actual number of representatives has usually been greater than that here given, owing to the admission of new States. Thus, the Fifty-second Congress (1891–1893) had 332 instead of 325; Washington, Montana, North Dakota, and South Dakota having been admitted in 1889, and Idaho and Wyoming in 1890. When Utah was admitted in 1896, her representative made the number 357 instead of 356.

Representatives at Large.—After the number of representatives has been determined for a decade, each State is divided into districts corresponding to its number of members, the voters of each district voting for one member. In cases where the new apportionment gives a State more members than it previously had, Congress provides that the additional member or members shall be elected by the State at large until the legislature has redistricted the State. Thus the inconvenience and expense of a special session of the legislature are avoided.

The Gerrymander.—While the number of congressmen to which each State is entitled for a decade can not be changed after having been once determined upon, the geographical arrangement of the districts represented by them within a State is subject to change by the State legislature. The district boundaries are sometimes changed according to the political bias of the inhabitants. In this way a population belonging largely to one party may be thrown together in one or two districts in which they predominate with large majorities, instead of being divided among several other districts in which these parts previously held the balance of partisan power. Thus the partisan make-up of a State's "delegation" can be materially changed and the partisan character of the House of Representatives affected. This practice is known as the *gerrymander*, from Governor Gerry of Massachusetts, where it was first employed, while he was governor, in redistricting the State to affect the make-up of the State senate. The abuse of this practice has, in some cases, led to such extreme political injustice that the courts have annulled the redistricting acts as being in violation of State constitutions.

Hawaii and Alaska each elect one delegate, Porto Rico one commissioner, and the Philippines two commissioners, who have seats in the House, and may debate, but have no vote.

Clause 4.—*When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.*

Vacancies may be created by death, resignation, removal, or accepting incompatible offices. All these cases have occurred. The person thus elected to fill a vacancy serves only for the remainder of the term.

Clause 5.—*The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.*

Officers of the House.—The speaker is the presiding officer of the House. The presiding officer of the Continental Congress was styled president. Where a legislature is composed of two houses, the presiding officer of the upper house is usually called president, and of the lower house speaker. The British House of Commons chooses its speaker, but the approbation of the Crown is necessary.

The "other officers" of the House of Representatives are a clerk, sergeant-at-arms, doorkeeper, postmaster, and chaplain. Unlike the speaker, these officers are not members of the House. There are also many minor employees.

The office of clerk is one of great importance, and is usually filled by an ex-member of Congress. The clerk presides at the organization of the subsequent Congress.

The Congress that convened December 3d, 1855, did not succeed in electing a speaker till the 2d of February, 1856, having balloted 133 times. Mr. N. P. Banks was the successful candidate. In the case of the Thirty-sixth Congress, in the winter of 1859–60, there was a delay of nine weeks. Mr. John Sherman was the principal Republican candidate, on one ballot lacking but three votes of election. He declined in favor of Mr. William Pennington, who was elected. A list of the speakers will be found in the Appendix.

Impeachment.—The Constitution gives to the House of Representatives the sole power of impeachment, and to the Senate the sole power to try the party impeached. As a citizen can not be tried before an ordinary court until he has been indicted by a grand jury, so an officer of the government

can not be tried by the Senate until articles of impeachment have been brought against him by the House of Representatives.

The method of proceeding, so far as the House is concerned, is this: A committee is appointed to inquire into the conduct of the officer supposed to have been guilty of acts requiring impeachment. If it reports in favor of impeachment, the question is acted on by the House. Should the House determine on impeachment, articles are prepared, embodying the charges, on each of which action is taken. A committee is then appointed to prosecute the impeachment before the Senate. For the method of trial and a list of the persons impeached, see Art. I., Sec. 3, Clauses 6 and 7, and the treatment on pages 63–65 of this book.

Sec. 3, Clause 1.—*The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years; and each senator shall have one vote.*[1]

The Senate; Discussion in the Convention.—In the Convention that framed the Constitution there was a great difference of opinion as to the mode of electing senators, as to their term of service, and as to the rule of suffrage. Some were in favor of a nomination by the State legislatures, and an election by the United States House of Representatives; others would have the President appoint from those nominated by the State legislatures; others would have the senators chosen by the House of Representatives; and others still proposed an election by the people. As to the term of office, some advocated a life tenure or during good behavior; some, a term of nine years; others, seven; others, six; and others, four.

Question of Voting.—The question of voting was the most difficult. As in the Continental Congress the States were on an equality as to their votes, the smaller States wished the same rule to hold under the Constitution; while the larger States claimed that an equality of votes in either house would be unjust. The smaller States finally conceded that in the

[1] In May, 1912, Congress proposed an amendment providing for the election of senators by the people. For the text of the amendment, see page 285.

House of Representatives the number of members should be in proportion to population; but they insisted that in the Senate the States should be equal. But the larger States insisted on proportional representation in the Senate as well as in the House, and the committee of the whole reported, "That the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first." This report was adopted by the Convention; but the matter was subsequently referred to a committee of one from each State, which reported the rule as it now stands. The final vote was: affirmative—Connecticut, New Jersey, Delaware, Maryland, North Carolina—5; negative—Pennsylvania, Virginia, South Carolina, Georgia—4; Massachusetts, divided. "So that this greatest and most difficult of all the important questions which the Convention was called upon to solve was carried by less than a majority of the States present, and by the concurrence of less than one third of the represented population."[1]

The first House of Representatives was to consist of 65 members; Connecticut, New Jersey, Delaware, Maryland, and North Carolina having 21, or less than one third of the whole number. (See *Constitution*, Art. I., Sec. 2, Clause 3.)

Mr. Madison strongly opposed the principle finally adopted. In his letter to Mr. Sparks he said the Gordian knot of the Convention was the question between the larger and the smaller States as to the rule of voting in the Senate; the latter claiming, the former opposing, the rule of equality.[2]

Number of Senators.—By the Articles of Confederation each State might send not more than seven delegates to Congress, nor less than two. They were elected annually, but no one could sit more than three years in six. The States could recall their delegates at any time. Under the Constitution, we see that each State can send two senators, and as many

[1] Towle, page 69. [2] Elliot, i., page 508

representatives as her population entitles her to; that there is nothing to prevent a senator or representative from being returned as often as his constituents desire; and that, when a senator or representative has been elected, the State has no power to recall him.[1]

Though all the States have the same number of senators, and each senator has one vote, that is not the same as voting by States, as was done in the Continental Congress. If both the senators of a State are present, and vote on opposite sides of a question, their votes neutralize each other, as under the Confederation. But if only one of two delegates from a State was present in the Continental Congress, his vote could not be counted; under the present Constitution, the vote of a senator is counted whether his colleague is present or not.

Election of Senators.—The Constitution does not prescribe the precise method in which the legislature of a State shall choose the senators, whether by the houses voting in joint assembly, or by voting separately. It is not properly an act of legislation, and the governor of a State has no participation in it, as, in most States, he has in ordinary legislation.[2]

In 1866, Congress passed an "Act to regulate the times and manner of holding elections for senators in Congress." It provides that the legislature of each State, which shall be chosen next preceding the expiration of the time for which any senator was elected, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator as follows:

Each house shall name (propose by vote) a person for senator by a *viva voce* vote; the next day at noon the two houses shall meet in joint assembly, and if the same person shall

[1] John Sherman was six times elected senator from Ohio, and actually served as senator thirty-two years. Thomas H. Benton was thirty years a senator from Missouri. Many have been elected four or five times.

[2] New York had no senators for the first few months of the First Congress, because of disagreement between the two branches of the legislature. The smaller upper house favored voting separately; the larger lower house wanted a joint vote of the two houses.

have received a majority of all the votes in each house, he shall be declared duly elected.

If no person has received such majorities, the joint assembly shall choose by a *viva voce* vote; and whoever shall receive a majority of all the votes cast, a majority of both houses being present, shall be declared elected.

If no person is elected the first day, the joint assembly shall convene each day at twelve o'clock and take at least one vote each day during the session, or until a senator is elected.

If a vacancy exists when the legislature convenes, the same steps shall be taken; and if a vacancy occurs during the session of the legislature, they shall proceed to elect on the second Tuesday after they have had notice of the vacancy.

Clause 2.—*Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*[1]

Senators Divided into Three Classes.—When the Senate convened March 4th, 1789, there were twenty senators present: Rhode Island and North Carolina had not yet ratified the Constitution, and New York had not elected her senators. These twenty were arranged in three groups, with seven in the first, seven in the second, and six in the third. When the two senators from New York took their seats, July 26th, one was placed in the third class, and the other in the first, mak-

[1] For the proposed amendment to this clause, see page 285.

ing eight of the first class, and seven of each of the others. The North Carolina senators, who came in November, fell into the second and third classes. The classes had now eight in each of them. In like manner, the senators of each new State have been placed in different classes, that their terms might not expire at the same time ; and the classes have been kept substantially equal, so that the terms of one third of the senators may expire every second year.

Working of the Plan.—If a senator from a new State is placed in the third class, we are not to infer that his term will be six years. As the Constitution went into operation in 1789, the terms of the senators of the first class would expire in 1791. The terms of their successors would expire in 1797, 1803, 1809, and so on. The terms of the senators of the second class would expire in 1793, 1799, 1805, etc. ; and those of the third class in 1795, 1801, 1807, etc. The senators from Ohio took their seats in 1803. One of them was placed in the first class and the other in the third. As the terms of senators of the first class expire in 1809, 1815, etc., the one in the first class would remain in office six years, while the one in the third class would remain but four, the terms of the third class expiring in 1807. Thus one Ohio seat in the Senate becomes vacant in 1915, 1921, and so on; the other, in 1917, 1923, and so on.

Congresses Designated Numerically.—The Senate is a permanent body, while the House of Representatives is changed every two years. As the Constitution went into operation on the 4th of March, 1789, the term of office of every senator, as well as representative, ends on the 4th of March of a year denoted by an odd number. A Congress is measured by the term of office of the representatives, the first extending two years from the 4th of March, 1789. It is customary to designate each Congress by an ordinal number. The Sixty-first Congress began March 4th, 1909, and ended March 4th, 1911.

When a vacancy is temporarily filled by executive appoint-

ment, the senator thus appointed holds his office till the legislature chooses his successor, or adjourns without making a choice.

Oftentimes State legislatures, because of a "deadlock" between political parties, have failed to cast a majority of their votes for any candidate and have adjourned without electing a senator. In some such cases the governor of such State has attempted to fill by appointment the vacancy thus resulting, but the Senate has decided not to recognize such appointees as senators or to admit them to membership in the Senate. This is on the ground that the governor is given no such power by the Constitution of the United States.

Senators "Instructed."—The legislature of a State sometimes adopts resolutions in which the State's representatives in Congress are "requested," and its senators "instructed," to vote for certain measures; thereby implying that the legislature has the right to "instruct" the senators, while it has not that right in regard to the representatives. But there is no right of instruction in either case. The Constitution prescribes the mode of election for the senator and for the representative; one is elected by the legislature, and the other by the people of his district. The mode is immaterial; it is but a mode. Once elected, the senator, as well as the representative, must be guided by his own enlightened judgment, and can not be instructed by those who elected him. Nor is either the senator or the representative to consult exclusively the interest of his own State or district. He is a member of a body which legislates for the nation. He is to consult the interests of the whole people, and not merely those of a section.

Clause 3.—*No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.*

Qualifications of a Senator.—A representative must be twenty-five years of age; a senator, thirty. A representative

must have been a citizen seven years ; a senator, nine. The condition as to residence is the same for both.

The age required in a Roman senator was thirty years. In Rome, majority was not attained till the age of twenty-five ; the same is true in France and Holland.[1]

There have occurred cases of election to the Senate without the requisite number of years of citizenship. Albert Gallatin was elected from Pennsylvania in 1793 ; his seat was vacated by resolution of the Senate. James Shields was elected from Illinois in January, 1849 ; his seat was vacated, also, but he was reëlected in October of the same year, his disability having been by that time removed. Henry Clay became a senator a few months before he was thirty ; in this case the irregularity was overlooked.

There is nothing to prevent a senator's changing his residence to another State after his election. He is not the representative of a particular State.

Clause 4.—*The Vice President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.*

The Vice President.—The Convention that formed the Constitution did not at first contemplate such an officer as Vice President. The senators were to elect their own presiding officer, who was to become President of the United States in case of the death, resignation, or removal of that officer. But as the mode of electing a President which was adopted by the Convention required two persons to be voted for at the same time, the one receiving the highest number of votes to be President, this provision for a Vice President was made near the close of the session. The lieutenant governor of a State is usually the presiding officer of the State senate.

The casting vote of the Vice President can be of efficacy only when in favor of a measure. If he had no vote, no measure could be carried upon

[1] Story, § 728.

which the Senate was equally divided. As it is, he has helped to carry some measures of great importance. By a rule of the Senate, adopted in 1828, "every question of order shall be decided by the president without debate, subject to appeal to the Senate."

In the British House of Lords, the Lord Chancellor, or some other person appointed by the Crown, presides. If no person is appointed, the Lords elect.

Clause 5.—*The Senate shall choose their other officers, and also a president* pro tempore, *in the absence of the Vice President, or when he shall exercise the office of President of the United States.*

The "other officers" of the Senate are a secretary, sergeant-at-arms, two doorkeepers, and a chaplain. These are not senators. There are also many minor employees.

The president *pro tempore* seems not to be appointed permanently, except on the death of the Vice President, or on his becoming President.

For a list of those who have been presidents *pro tempore* when there was no Vice President, see the Appendix.

When the Vice President becomes President of the United States, the president *pro tempore* receives the salary of the Vice President. The president *pro tempore* is not restricted to a casting vote; he has his vote as senator.

Clause 6.—*The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.*

The Senate Tries Impeachments.—The Senate, whose principal functions are legislative, is here clothed with judicial powers. All those who are impeached by the House of Representatives must be tried by the Senate.

In Great Britain, the power of impeachment is with the

Commons, and the power of trial with the Lords; but the Lords do not take a special oath, and a majority is sufficient to convict. Our method is thus more favorable to the party under trial than is the British.

When the President is tried the Chief Justice presides, because the Vice President is interested in the result of the trial. If the President is convicted, the Vice President succeeds to the office. When Andrew Johnson was tried in 1868, Chief Justice Chase presided. If Mr. Johnson had been convicted, the president *pro tempore* would, by the law of March 1st, 1792, have succeeded to the presidency; on that account it was claimed that he ought not to participate in the trial. His own view of his right and his duty differed from this, however, and he voted on the case as other senators.

There have been eight cases of impeachment: William Blount, senator from Tennessee, in 1798; John Pickering, District Judge of New Hampshire, in 1803; Samuel Chase, Associate Justice of the Supreme Court, in 1804; James H. Peck, District Judge of Missouri, in 1830; West H. Humphries, District Judge of Tennessee, in 1862; Andrew Johnson, President, in 1868; W. W. Belknap, Secretary of War, in 1876; and Charles Swayne, District Judge of Northern Florida, in 1905. Only Judges Pickering and Humphries were convicted. For the trials, see pages 199–201.

Clause 7.—*Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.*

Punishment in Cases of Impeachment.—In Great Britain there is no such limitation in the punishment. The person convicted may be fined, or imprisoned, or banished, or put to death. But in our country the punishment is political—removal from office and disqualification for it. This judgment, however, does not prevent a subsequent trial by jury for the criminal violation of law.

In a subsequent article it is provided that a civil officer of the United States, impeached and convicted, "shall be removed from office." This punishment is imperative; he may be punished further by disqualification to hold office. The punishment inflicted on such an officer, who has been convicted by the Senate, can not be less than removal from office; it can not be greater than removal and disqualification combined. Judge Pickering was removed from office only; Judge Humphries was removed from office, and declared disqualified to hold any office of honor, trust, or profit under the United States.

Sec. 4, Clause 1.—*The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.*

The Control of Elections by Congress.—By act of Congress, passed June 25th, 1842, it was provided that representatives should be elected by *districts of contiguous territory* equal to the number of representatives. This is believed to have been the first instance of any regulation by Congress touching elections of senators or representatives. In 1866 an act was passed to regulate the *mode of choosing senators,* as already stated (pages 58, 59). In 1871 Congress enacted that all votes for representatives in Congress should be by *written or printed ballots,* any law of any State to the contrary notwithstanding. In 1872 provision was made that representatives should be elected *on the same day* throughout the United States, viz., on the Tuesday after the first Monday in November; to go into effect in 1876. By act of 1875, States whose constitutions prescribed a different day were exempted from its effect. In 1899 Congress modified the law as to votes for representatives in Congress, providing that these votes should

be by written or printed ballot or *voting machine* the use of which has been authorized by State law.

Opposition to this Clause.—This clause, giving to Congress the ultimate control as to elections for senators and representatives, met with little opposition in the Convention, but it was opposed in some of the State conventions. "Its propriety," says Mr. Hamilton, "rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation."[1] But the opponents of the Constitution maintained that this clause gave to Congress the whole ultimate control of elections for members of Congress, including the qualifications of electors and elected, except as stated elsewhere in the Constitution.

Patrick Henry said: "The control given to Congress over the time, place, and manner of holding elections will destroy the end of suffrage. . . . Congress may tell you they have a right to make the vote of one gentleman go as far as the votes of a hundred poor men. . . . They may regulate the number of votes by the quantity of property, without involving any repugnancy to the Constitution."[2]

The practice has been for the States to prescribe the qualifications of voters in their constitutions. Mr. Farrar claims, on the other hand, that it was well understood by both parties at the time the Constitution was framed, "that the whole law of elections, subject to the provisions of the Constitution, was under the control of Congress."[3]

The Constitution of the Confederate States says, "No person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, State or Federal." Thus their federal constitution prescribed qualifications for voters at State elections.

The restricting clause, as to the place of choosing senators, was inserted that Congress should not have the right to prescribe to the State legislatures their places of meeting.

Clause 2.—*The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

[1] Federalist, No. 59. [2] Elliot, III., pages 60, 175
[3] *Manual of the Constitution*, page 268.

Sessions of Congress.—Annual sessions are thus made imperative. As the term of each Congress is two years, there are two regular sessions during each term. There have been repeated instances of three sessions by the same Congress.[1] For the first thirty-two years the regular sessions began on the first Monday in December about half the time; since then all the regular sessions have begun on that day.

The Two Sessions Unequal.—The first regular session of each Congress usually continues from December till the following spring or summer. The Thirty-first Congress was in session till the 30th of September—three hundred and two days. The second regular session closes at noon on the 4th of March, being thus about three months long. Until 1853 the term ended at midnight of the 3d of March. Since that time Congress has continued in session till noon of the 4th. The journals of the two houses still bear the date of the 3d, and the laws signed between midnight and noon of the 4th are dated the 3d of March.

By act of January 22d, 1867, each new Congress was required to meet "at twelve o'clock, meridian, on the 4th day of March, the day on which the term begins for which Congress is elected." Under this act each Congress had three sessions: the first commencing on the 4th of March, the second on the first Monday of December of the same year, and the third on the first Monday of December of the following year. The first session was very short, and the second and third were regarded as the regular sessions. This act was in force during the Fortieth, Forty-first, and Forty-second Congresses, and was then repealed.

Under the Articles of Confederation, the congressional year began the first Monday in November, the members being elected for one year. Congress might adjourn to any time within the year, but not for a longer period than six months.

[1] There were three sessions in the First Congress, the Fifth, Eleventh, Thirteenth, Twenty-fifth, Twenty-seventh, Thirty-fourth, Thirty-seventh, Fortieth, Forty-first, Forty-second, Forty-fifth, Forty-sixth, Fifty-third, Fifty-fifth, Fifty-eighth, Sixty-first, and Sixty-second.

Sec. 5, Clause 1.—*Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.*

Contested Seats.—The certificate of election furnished by the State authorities is *prima facie* evidence that the person holding it is entitled to a seat, but it is not conclusive. Each house has a Committee on Elections, to which are referred all doubtful cases, and on their report the house decides: from this decision there is no appeal. Most legislative bodies exercise the same power as to the admission of members.[1]

Quorum.—A majority seems to be a suitable quorum. In the British House of Commons, composed of about six hundred and seventy members, forty is a quorum. Under the Articles of Confederation, no question, except that of adjournment, could be decided by Congress unless by a majority of all the States; and for the most important questions nine States were required, *i.e.*, two thirds.

There was no power to compel attendance, and business was frequently delayed through the absence of members. In one instance, Congress

[1] Until 1867, the British House of Commons decided all questions touching the elections of its members, but since that date election petitions (or contests) are tried by the common-law judges.—*Johnson's Cyclopædia*, *Art. Parliament.*

It is very doubtful whether the British practice would be the best for the United States. The power of the judiciary in the United States is now very great and it is vested with the power of deciding the extent of its own authority. It is essential that respect for the courts be maintained, and one of the best means of preserving this is to keep from their consideration, so far as possible, questions of such a political character as to arouse suspicion in passionate minds that partisan bias has affected the minds of the judges in reaching a decision. No more dangerous subject could be found than election contests, with their charges and counter-charges of fraud and corruption. The English House of Commons at a very early date in the fourteenth century claimed the right to decide matters pertaining to the election of its own members. It has always exercised such right except as it has relinquished it by statute to the courts of law.

assembled on the 3d of November, but there was no quorum till the 14th of January. Rhode Island once recalled her delegates, and so prevented the transaction of important business.

In the State of Ohio, no bill can be passed without the votes of a majority of all the members *elected* to each house. The constitution of Illinois has a similar provision.

By a rule of the House of Representatives, fifteen members, including the speaker, can compel attendance.[1]

Clause 2.—*Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.*

Parliamentary Rules.—The "rules of proceedings" generally recognized as governing deliberative assemblies constitute what is called Parliamentary Law. When the First Congress convened, in 1789, the House of Representatives established rules, some of which are still in force. At the beginning of the first session of each Congress it is usual to adopt the rules of the previous Congress until otherwise ordered, and a committee is appointed to report new rules during the session.

Counting a Quorum.—During the Fifty-first Congress a great controversy arose between the Republican and Democratic members of Congress over a rule giving the speaker (Mr. Reed) the right to "count a quorum," as it was called. It had, theretofore, been customary to regard a member refraining from voting upon a question as not forming a part of the majority of the House which the Constitution declared to be the quorum necessary for the transaction of business. The practice of refusing to vote is called filibustering. Under the old rule, unless the prevailing party could muster, from its own adherents, a majority of the membership of the House, any party measure was liable to defeat. The effect of the old rule was to permit a man to debate and in

[1] Rules of the House of Representatives, Rule XV.

various ways to oppose legislation, and yet by his refusal to vote to render himself "constitutionally absent." As the Republican majority in the Fifty-first Congress was very small, this power of the minority would have been very effective. Mr. Reed, however, adopted the course of counting the non-voting members actually present as a part of the House, and thus making a quorum. The right to do this was questioned rigorously, but the Supreme Court sustained the laws thus passed, and the course has become established as a legal method of procedure.

Expulsion of Members.—The power to punish a member has been exercised by both houses. William Blount, senator from Tennessee, was expelled in 1797, and Jesse D. Bright, senator from Indiana, in 1863. There were other cases during the civil war.

It seems to be settled that a member may be expelled for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a member.[1]

Contempt.—The Constitution does not confer any express power to punish *contempts*, *i.e.*, offenses by persons not members of the house; but this power has been considered to belong to the legislative assemblies as such, and the Supreme Court has so decided. But the power to punish is held to extend only to imprisonment, and this only until the dissolution of the house by which the punishment is inflicted.

Clause 3.—*Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.*

Open Sessions.—It is usual for both houses to have open sessions, except the Senate when in executive session, *i.e.*,

[1] The power to punish, suspend, or expel its own members is possessed by every deliberative body. It has been claimed and exercised by the English House of Commons throughout its history, beginning in the fourteenth century.

acting upon nominations made by the President, or engaged in discussion of treaties. The Convention that framed the Constitution sat with closed doors, and so did the Senate from the beginning of the First Congress until the second session of the Third Congress.

Methods of Voting.—There are different methods of voting in Congress. The usual method is *viva voce,* the presiding officer deciding by his ear. If he is doubtful as to the result, he makes a count, the members rising for that purpose. Or, if a member questions the correctness of his decision, a division of the house is called for, and tellers are appointed who count the voters. But in important questions the roll of the house is called by the clerk, and each member's vote is recorded in the journal. This is voting by "yeas and nays." It enables the people to know how their representatives vote, and a permanent record of the votes is kept.

The Articles of Confederation required the yeas and nays to be taken when called for by a single member. The present provision, making the yeas and nays dependent on the call of one fifth the members present, is a decided improvement on the former one. A factious minority often avail themselves of this rule to delay proceedings, and prevent the passage of a bill. Thus, a member moves for adjournment, for example, and asks for the yeas and nays. If a fifth of those present concur in this request, the roll must be called, occupying much time. Oftentimes the member moving to adjourn votes against his own motion. Such a motion is called a dilatory motion.

Mr. Reed, speaker of the Fifty-first Congress, adopted the course of refusing to entertain dilatory motions or to recognize members who he had reason to believe were about to make dilatory motions.

Clause 4.—*Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.*

Under the Articles of Confederation, Congress could adjourn to any time within the year, and to any place within

the United States, but no adjournment could be for a longer period than six months. The present provision was made necessary by the division of the Congress into two houses. It prevents either house from interrupting, by adjournment, the progress of business.

Sec. 6, Clause 1.—*The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.*

Compensation of Members.—Under the Articles of Confederation, each State paid its own members of Congress. By providing for their payment from the national treasury, the Constitution makes them independent of the States. In the Convention Mr. Madison said that he could not see any chance of that stability in the general government, the want of which was a principal evil in the State governments, if the members were left dependent on the States for their compensation.

In the British Parliament the members formerly received no compensation.[1] And in our Convention, Gen. Pinckney suggested, as the Senate was to represent the wealth of the country, that no salary be allowed. This was seconded by Franklin, but disagreed to, the vote standing six to five.

The compensation is to be ascertained by law; that is, Congress itself is authorized by the Constitution to determine it. The First Congress passed an act fixing the allowance at six dollars a day while in attendance, and six dollars for each twenty miles of travel in going and returning. The speaker

[1] In 1911, however, an act of Parliament provided regular salaries for the members of the House of Commons.

of the House, besides his pay as representative, was to have six dollars a day additional.

The rates have been changed repeatedly, making the compensation for different periods as follows:

From 1789 to 1815, $6.00 a day.
" 1815 " 1817, $1,500 a year.
" 1817 " 1855, $8.00 a day.
" 1855 " 1865, $3,000 a year.
" 1865 " 1871, $5,000 a year.
" 1871 " 1874, $7,500 a year.
" 1874 " 1907, $5,000 a year.
" 1907 " ——, $7,500 a year.

The senators and representatives have received the same compensation except for one year, 1795, when the senators received $7.00 a day.

The speaker of the House and the president of the Senate receive $12,000 a year.

Mileage is allowed at the rate of ten cents a mile both going and returning by the nearest route for each regular session.

Members of both houses are also allowed a certain sum for clerk hire, and are provided with various necessaries for the transaction of legislative business.

The change made in 1816, from $6.00 a day to $1,500 a year, was received by the people with great disfavor, and many members were not returned to the next Congress in consequence. The change made in 1873 —March 3d, to take effect from March 4th, 1871—also called forth very severe criticism. The members were blamed for the large increase of salary, and still more for making it retroactive. A number of members refused to receive the increase for the time already expired. The retroactive feature is, however, not peculiar to the act of 1873. The law of 1816—March 16th—was operative from March 4th, 1815. That of August 16th, 1856, increased the compensation from March 4th, 1855. So that of July 28th, 1866, took effect from March 4th, 1865. But the act of February 26th, 1907, did not take effect till March 4th, 1907.

All the acts prior to that of 1866 were separate and independent acts;

but the acts of 1866, 1873, and 1907, were sections in appropriation bills. The acts of 1866 and 1873 were passed on the last day of the session.

Freedom from Arrest.—The privilege of freedom from arrest has belonged to legislative bodies in Europe for many years. The exceptional cases are what are called indictable offenses. Whoever should cause the arrest of a member would be liable for trespass, and might also be punished for contempt of the house. The privilege commences from the time of the election, and before the member takes his seat or is sworn.

Freedom of debate is secured by this clause. But the privilege is confined to words spoken in the course of parliamentary proceedings, and does not cover things done beyond the place and limits of duty.

The privilege from arrest secures the member, of course, against all process, the disobedience to which is punishable by attachment of the person, as a *subpœna* or a summons to serve on a jury.[1]

Clause 2.—*No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.*

Offices Forbidden to Members of Congress.—The first part of this clause was intended to prevent corruption and secure the integrity of the members. It would tend to diminish the temptation to create lucrative offices which they themselves might hope to fill. But the security is only partial, as an office created during the term of a member might be held by him many years after his membership had expired.

The acceptance of an office under the United States, by

[1] Story, § 860–§ 866.

one who has been elected a member of Congress and has taken his seat, operates as a forfeiture of his seat. But if one holding an office under the United States is elected to Congress, he may hold the office until he is ready to take his seat, when he must resign.

A commission in the army is, no doubt, incompatible with the office of Congressman. During the Spanish-American war Joseph Wheeler, a member of the House of Representatives, became a Major General. At the close of hostilities he resumed his seat in the second session of the Fifty-fifth Congress. Action was taken by the House to declare his seat vacant. The resolution was referred to the Committee on Judiciary, which reported in favor of its adoption; but, owing to the popularity of Wheeler, it was not brought in by the committee until a few days before adjournment. No action, therefore, was taken by the House, but Wheeler did not participate in the deliberations of the House during that session.

There is no provision in the national Constitution to prevent a congressman from holding a State office. Governor David B. Hill continued to exercise the office of governor of New York after his term as United States senator had begun. It began March 4th, 1891, and he did not cease to be governor until December 31st, 1891, though the Congress to which he had been elected commenced its sittings December 7th.

Cabinet Officers in the United States and Great Britain.— In Great Britain, the members of the Cabinet may also hold seats in Parliament, but our Constitution prohibits Cabinet officers from being members of Congress. The subject has been often discussed, but no serious attempt has been made to amend the Constitution in this respect. By the present arrangement, the legislative and executive departments of the government are more widely separated, and any undue influence of the executive is better guarded against.

This practice shows the crucial difference between the United States and other governments. In the United States the three functions or departments of government are kept absolutely separate except in two or three instances where modification is necessary for harmony and safety, as in the veto power of the executive, the treaty-making and the confirming power of the Senate, and, owing to the peculiar importance of the subject, the process of impeachment.

Sec. 7, Clause 1.—*All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.*

Bills for Revenue.—This clause corresponds to the practice in the British Parliament. The House of Commons early asserted (and has since maintained) the exclusive right to originate revenue bills, in order to control the King. It used this right as a means of preventing him from waging war without its consent, and of forcing him to recognize the authority of Parliament in order to secure funds for the conduct of the government. The subject was discussed at great length in the Convention, and was not finally decided till near the day of adjournment. It was so connected with other provisions of the Constitution as to render it difficult to ascertain by what principles it was settled. As first acted upon by the Convention, the clause was much more comprehensive than in its present form: "That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch."

Our circumstances differ so widely from those of Great Britain that there seems to be no sufficient reason why the Senate should not have been permitted to *originate* bills for raising revenue as well as to *amend* them; why they should not have been permitted to provide for raising revenue as well as to make appropriations. During the third session of the Forty-first Congress, the Senate passed a bill to *repeal* the law imposing the income tax. But the House of Representatives, instead of acting upon it in the usual way, passed a resolution calling the attention of the Senate to this clause of the Constitution.

Bills looking to the raising of money have originated in the Senate and have passed into laws: as the bill to establish the post office, that to establish the mint, and bills to regulate the sale of the public lands. "*Raising revenue*" is understood thus to be confined to *levying taxes.*

Clause 2.—*Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.*

The President and Legislation; the Veto.—This clause gives the President some participation in legislation. The executive and legislative departments are not entirely disjoined. But the President's participation is negative. This returning of a bill with objections is called *vetoing* the bill, though the word *veto* does not occur in the Constitution. In Great Britain the sovereign possesses an absolute veto, but it is said not to have been exercised since 1707, in the reign of Queen Anne.

In the Convention, various plans were discussed for revising the bills passed by Congress. One was to give the right of revising all bills to the executive and the judiciary. This was Mr. Randolph's plan, and was approved by Mr. Madison. Some members wished the President to have an absolute veto. At one time the Convention voted in favor of requiring a vote of three fourths of each house in order to pass a bill over the President's veto.

Veto in the States.—The present method has commended itself to the people of the country. It is, doubtless, better than one admitting an unqualified veto, and better than one that should require a three fourths vote in each house. The practice in the State governments is not uniform. In one the governor has no veto, while in others a bill may be passed over a veto by a bare majority in each house. In about two thirds of the States the governor may veto one or more items in an appropriation bill and approve the others.

Vetoes by the Presidents.—The veto power has been used by most of the Presidents. In the first forty years, there were no bills vetoed by John Adams, Jefferson, or John Quincy Adams. Washington vetoed two bills; Madison vetoed five and retained one; Monroe vetoed one. In later years the veto power was used more freely. Several Presidents vetoed between four and twenty bills each; Grant vetoed forty-one, and Cleveland three hundred and forty-three. Most of Cleveland's vetoes were during his first administration, and most of the bills he vetoed were of little importance, being for the purpose of granting small pensions to soldiers of the civil war or to their widows or orphans under circumstances not covered by the general pension laws. No bill was passed over the veto of a President till the administration of Mr. Tyler. One was so passed in his administration; five in that of Mr. Pierce; fifteen in that of Andrew Johnson; four in that of Grant; one in that of Hayes; one in that of Arthur; two in that of Cleveland; and one in that of Harrison.

It has been decided by the Senate that only two thirds of the members present are requisite to pass a bill over the President's veto, and not two thirds of the whole Senate.

Methods of Legislation.—There are three methods by which a bill may become a law. (*a*) If it is passed by a majority of each house and is signed by the President. (*b*) Without the signature of the President, if it receives the votes of two thirds of the members present of each house, after having

been returned by the President with his objections. (*c*) If, having been passed by each house, and sent to the President, it is retained by him ten days (Sundays excepted), provided that Congress has not adjourned in the meantime.

The method (c) is rarely used. The Revenue Bill of 1894 became a law in this manner, without the signature of President Cleveland. He was opposed to some of the provisions of the bill, especially the tariff measures, and refused to ratify that legislation with his official signature. As the government would have been without funds to defray running expenses unless this bill became a law, or a substitute for it was passed, and as Congress could not be expected to agree upon a substitute, Mr. Cleveland did not veto it but permitted it to become a law by not returning it to Congress within ten days.

In some States the governor may sign a bill after the adjournment of the legislature ; in New York, within thirty days. The Constitution of the United States is silent in regard to this point. One instance, however, of approval of a bill by the President after the adjournment of Congress, is given in the Statutes—the act approved March 12th, 1863, nine days after the expiration of the Thirty-seventh Congress.

Clause 3.—*Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.*

Resolutions Require the Approval of the President.—This clause prevents the passage of laws under the name of resolutions, etc., without the approval of the President. The process is the same, no matter what may be the term em-

ployed, whether order, resolution, vote, or bill. Whatever does not relate to the internal government of the individual house, as elections, votes of censure or thanks, etc., requires the signature of the President, or a two thirds majority in each house. A joint resolution, approved by the President, or duly passed without his approval, has all the effect of law.

A resolution of Congress proposing an amendment to the Constitution does not require the signature of the President, though in one or two cases such resolutions have been sent to him through inadvertence. In February, 1865, Congress passed a joint resolution that the electoral votes for President and Vice President, given in certain States then in rebellion against the government, should not be received or counted. The President approved the resolution, but said in a message that his approval was not necessary. (The electoral votes were counted on the 8th, though the official approval of the President was not received till the 10th.) In March, 1866, the two houses determined that neither house should consider the credentials of any man presented as a member from a State lately declared to be in rebellion, until Congress should have decided that such State was entitled to representation therein. This resolution was not sent to the President.

Concurrent and Joint Resolutions.—In the financial controversy over the free coinage of silver in 1896, the Matthews Resolution became a prominent subject of debate and it was appealed to as morally if not legally binding the government. It was a resolution introduced into the United States Senate by Stanley Matthews, senator from Ohio (1877–81), expressing the purpose of Congress to redeem and pay all the government obligations in gold and silver according to the option of the government. It was not signed by the President or submitted to his consideration It was a resolution of the two houses of Congress expressing the sentiments of the legislative department upon a financial proposition. It did not enact anything or bind the government. It was not binding on Congress itself and did not require a repeal The Matthews Resolution was a "concurrent," not a "joint," resolution.

By the Constitution of the United States and the rules of the two houses no absolute distinction is made between bills and joint resolutions, either in regard to the mode of proceeding with them before they become laws, or in regard to their force and effect afterwards. For more than fifty years, however, a very marked distinction seems to have been recognized in the legislation of Congress, and the form of joint resolution was

resorted to chiefly for the following purposes, viz.: to propose an amendment to the Constitution; to express the sense of Congress; to construe provisions in former laws; to admit new States; and to direct or regulate the printing of documents. Until the Twenty-seventh Congress no instance is found of an appropriation elsewhere than in a bill. The old distinction between bills and joint resolutions is obsolete and they are governed by the same rules.

Concurrent resolutions are used where the assent of the two houses only is considered necessary. The practice for many years has been not to present them to the President for approval.

Sec. 8, Clause 1.—*The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;*

The Powers of Congress.—In Article I., Section 1, it is declared that all legislative powers granted in the Constitution shall be vested in a Congress of the United States. In Section 8 it is declared more specifically that Congress shall have power, *i.e.*, rightful authority, to legislate on various subjects. But it is not intended that this shall be considered an exhaustive enumeration of the powers of Congress, or that Congress shall not legislate except on the matters here mentioned; for the eighteenth clause gives Congress power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all *other* powers vested by this Constitution in the government of the United States, or in any department or officer thereof." The Constitution itself in other sections requires of Congress the exercise of powers not specifically mentioned in this section; and it implies in various places that Congress must do what it is nowhere in the Constitution expressly authorized to do. Some of these cases will be cited, and the subject will be still further discussed, in connection with the consideration of the eighteenth clause.

Power of Taxation.—Every civil government must have a revenue for its own support, and the subject of raising funds is appropriately placed in this first clause. Under the Articles of Confederation the common treasury was supplied by the several States, in proportion to the value of the land with the buildings and improvements. Taxes were not laid and collected by the general government, but were levied by the authority and direction of the legislatures of the several States. The subject was discussed in the Convention with great earnestness, and the result was to give to Congress the control of the whole subject of taxation and revenue so far as relates to the administration of the general government.

The obvious construction of the language of the clause makes it confer upon Congress the power to raise a revenue for the purpose of paying the debts and providing for the common defense and general welfare. This involves the power to pay the debts and provide for the general welfare.

The four terms used, *taxes, duties, imposts,* and *excises,* were originally of nearly the same signification. They imply pecuniary burdens imposed by a civil government upon its subjects. This clause distinguishes between *taxes* and the others, inasmuch as it states that "all *duties, imposts,* and *excises* shall be uniform throughout the United States." In Article I., Section 2, Clause 3, representatives and *direct taxes* are required to be apportioned among the several States in proportion to their population.

Direct Taxes.—In modern political economy, that is a *direct* tax which comes from the property of the nominal payer, while an *indirect* tax is assessed on one person but may be really paid by another; thus duties on goods imported are indirect, as the consumer pays them, while poll taxes and those imposed directly on property are direct. But the constitutional meaning of "direct" tax is historical rather than theoretical; and the courts have decided that taxes on carriages, for example, are not direct taxes, though political economy would

so regard them. So, also, of taxes on incomes (other than incomes from real or personal property), and on inheritances. By decisions of the Supreme Court, direct taxes, in the sense of the Constitution, are of two kinds only : (*a*) those on real or personal property (including income from real or personal property),[1] and (*b*) capitation or poll taxes.

Taxes by States and by the United States.—The taxes levied by the State governments, by counties, and by cities and towns, are for the most part direct taxes. The revenues of the general government are almost wholly from indirect taxation. Congress has never levied a general tax on *all* the property of the country. Until the time of the civil war the general government derived nearly all its revenues from duties on goods imported into the country.

Before that time, a direct tax had been laid but four times since the adoption of the Constitution, viz., in 1798, 1813, 1815, 1816. In these cases, the tax was upon lands, houses, and slaves. The amount of tax to be paid by each State was named in the act, and was in proportion to the population, and not according to the property of the State. In one or two cases the amount of tax assessed upon each county of the several States was given. In the act of 1798, the tax on each slave was fifty cents. In the others all the property taxed was to be assessed at its true value. In each case the tax was in force but a single year.

Direct Tax of 1861.—In August, 1861, after an interval of forty-five years, another direct tax was levied. This was done in consequence of the civil war. The act required that twenty millions of dollars a year be levied on all lots of ground, with their improvements and dwelling houses. The amount was apportioned among the States and Territories

[1] In 1894 a law was enacted taxing all incomes over $4000 per annum. The Supreme Court decided that as far as it related to rents and other incomes from real estate, and to income from personal property, it was a *direct* tax, and therefore unconstitutional for being uniform instead of being apportioned among the States according to population. For this and other reasons the whole tax was declared unconstitutional and void. In 1909 Congress submitted to the States a constitutional amendment giving Congress the power to levy a uniform income tax (page 285).

and the District of Columbia, according to their population, as required by the Constitution.[1] The law provided that any State or Territory might collect its quota, and be allowed fifteen per cent of the amount for the expense of collection. All the Northern States and Territories, except Delaware and Colorado, assumed the payment of the tax.[2] This law, like the others of an earlier period, was in force but one year. By act of July 1st, 1862, its operation was suspended, save as to the collection of the first annual tax, until April 1st, 1865.[3] By act of June 30th, 1864, it was again suspended till Congress should take further action.[4]

Import Duties.—The second act passed by Congress after the adoption of the Constitution was, "for laying a duty on goods, wares, and merchandises imported into the United States." All civilized nations adopt this as one of the methods of raising revenue. There is a great diversity of opinion as to the articles upon which duties shall be levied; whether it is or is not expedient to impose duties upon those which would come into competition with the products of the country itself. It is worthy of notice that the act last mentioned, which was passed July 4th, 1789, had a preamble as follows: "Whereas, it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares, and merchandises imported: Be it enacted," etc.

We have seen that until 1861 direct taxes had been levied for only four years since the adoption of the Constitution; but duties on goods imported have been collected from the first, and for most of the time have formed the chief source of revenue. The "tariff" laws, under which these duties

[1] The Territories had not been named in any previous act imposing direct taxes; nor the District of Columbia, prior to 1815.

[2] Report of Commissioner of Internal Revenue for 1870, page 14.

[3] Statutes at Large, XII., 489.

[4] Ibid, XIII., 304.

have been collected, have many times been changed ; and the disputes over the tariff question have been among the most prominent in the strife of political parties. As a matter of law it is settled that tariff laws framed for the purpose of protecting manufactures are constitutional ; but many statesmen have held that such acts are outside the scope of powers which the framers of the Constitution intended should be delegated by that instrument to the general government.

Excise Duties.—The term *excises,* though used in the Constitution, does not appear in the laws enacted by Congress before 1909. As commonly used, it signifies all taxes not *direct,* except duties on imports and exports. In a narrower meaning, it is a tax upon the *production* of commodities. Thus, distillers pay a tax of so much a gallon on the whisky they manufacture, and oil refiners have paid a similar tax.

Before the civil war the great part of the revenue raised by the United States had come from duties on goods imported—"customs" duties. In July, 1862, an act was passed to provide "internal revenue." It imposed duties on a great variety of manufactured articles, on divers trades and occupations, as also on carriages, plate, etc., etc. It was so comprehensive that the revenue produced by it in the year 1866 amounted to the enormous sum of $309,000,000.

Duties of this kind had been laid in a few instances before, though on a very limited scale. In 1791 there was a duty on spirits distilled in the United States. In 1794 carriages were taxed and duties were laid on sugar refined and on snuff manufactured. About the same time auction sales were taxed and stamp duties imposed.

In April, 1802, an "Act to repeal the Internal Taxes," swept away "the internal duties on stills and domestic distilled spirits, licenses to retailers, sales at auction, carriages for the conveyance of persons, and stamped vellum, parchment, and paper." But in 1813 these were restored, and the office of Commissioner of the Revenue was established, "for superintending the collection of the direct tax and internal duties."

In 1815, the list of manufactured articles on which internal duties were levied was largely increased, and taxes were imposed also upon household furniture and gold and silver watches.

Duties, etc., Uniform.—All these taxes—they are called *duties* in the statutes of the United States—were required to be uniform by the Constitution. Thus, if upon a promissory note for a given sum a certain duty was levied in one State, the same duty must be paid upon a note of the same amount in every other State. If the owner of one gold watch was required to pay a tax of one dollar, every one owning a gold watch must pay a like sum. But direct taxes must be in proportion to the population of the State. If two States are equal in population, their citizens must pay to the general government the same aggregate amount of direct taxes, though the citizens of one State may possess twice as much property as those of the other.

Income Taxes.—The act of Congress of 1861, which levied a direct tax on the States and Territories, provided also for an *income* tax, believed to be the first ever levied by our general government. The constitutionality of this act was questioned by some on the ground that in political economy an income tax is regarded as a direct tax. The Supreme Court decided that it was not a direct tax in the sense of the Constitution. The tax was three per cent per annum on the excess of income over eight hundred dollars. In 1865 it was changed to five per cent on the excess of income over six hundred dollars; but ten per cent on the excess over ten thousand. For the years 1870 and 1871 it was two and one half per cent on the excess of income over two thousand dollars. No income tax has been collected since 1871, the law of 1894 having been declared unconstitutional soon after its passage. The amount collected on this tax in 1866 was $61,000,000.

Amount of Revenue.—The income to the government from internal revenue from 1791 to 1849 was about $22,000,000, ranging from about

$200 in 1843 to $5,124,708 in 1816. During the same period the income from customs was about $946,000,000. But in the year 1866 the income from internal revenue was over $309,000,000, that from customs being about $179,000,000. From 1869 to 1897 (except 1894) the receipts from customs exceeded those from internal revenue, the tax having been taken off various manufactured articles. In June, 1898, a war revenue bill was passed, which greatly increased the internal taxes. An important feature of this act was the provision requiring stamps upon commercial paper, bonds, leases, deeds, powers of attorney, stocks, telegraph messages, warehouse receipts, insurance policies, money orders, certificates of deposit, etc. Stamps were also required upon proprietary medicines and other articles. Another important feature of the act of 1898 was the imposition of an *inheritance tax* on legacies or distributive shares arising from personal property and worth over $10,000. In the year ending June 30th, 1900, the customs receipts were about $233,000,000, and the internal revenue was about $295,000,000. The war revenue taxes were soon repealed, but in 1909 a "special excise tax" was imposed on the net income of corporations above $5000 a year. The income in the fiscal year 1911 was, from customs, about $314,000,000, and from internal revenue, about $323,000,000.

Clause 2.—*To borrow money on the credit of the United States;*

Borrowing Money.—In time of peace, the ordinary revenues of a nation should be sufficient to pay the expenses of its government; but in time of war these will be insufficient, and debts must be incurred. All nations possess this power of borrowing money, and all have exercised it. The usual mode of making loans is to issue the bonds of the government, which are its promises to pay the sums specified, at a given time, and with interest at given rates, payable semi-annually or quarterly. These bonds are then sold at the best rates the government can command, usually at par or at a premium.

United States Bonds.—The United States has issued bonds from time to time since the formation of the government; though these were held by only a few persons until the civil war made large loans necessary. Then efforts were

made to circulate them among the people, and with such success that multitudes purchased United States bonds who had never before seen securities of this character. The issues were of various denominations, $50, $100, $500, $1,000, and so on.

The bonds of the United States can not be taxed by the State governments, according to a decision of the Supreme Court, even if the bonds themselves contain no stipulation to that effect.

The Public Debt of the United States, on the 1st of January, 1791, was about $75,000,000. In 1816, at the close of the second war with Great Britain, it was over $127,000,000, which within about twenty years was entirely paid. In 1861 (July 1st) the debt was $90,000,000, and in 1866 it was $2,773,000,000. On the 1st of July, 1891, it was $1,560,000,000; on July 1st, 1911, $2,765,000,000; but the interest-bearing debt in 1891 was only $611,000,000 and in 1911 only $915,000,000. The advantages of distributing the payment of a debt over a period of years are obvious. The country is every year becoming richer, and thus more able to pay off its indebtedness. What would have been an insupportable burden at the creation of the debt, becomes, in the lapse of years, tolerable and easy. At the same time, the temptation to postpone unduly the payment of principal should be steadily resisted. The ordinary expenses of the government will always call for heavy taxes, without adding to them interest on debts.

The Government in Good Credit.—At the close of the civil war the government was paying six per cent interest on nearly all its indebtedness; but the country has advanced so rapidly in material prosperity, and the national finances have been so wisely managed, that the rate fell to three per cent. In 1900 provision was made for refunding the debt by the issuance of bonds payable in gold and bearing interest at the rate of two per cent; but the demand for these bonds was due largely to the use made of them in the national banking system.

A portion of our present public debt is in the form of treasury notes, commonly called legal tenders, which are cir-

culated as money, and on which the government pays no interest. The power to issue these comes from this clause (to borrow money) but it will be more convenient to consider them under another clause. (See page 113.)

Clause 3.—*To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;*

Commerce before the Constitution.—Prior to the adoption of the Constitution the power to regulate commerce was not in Congress, but in the several States. Each State was able to make such regulations as its own interests seemed to require, without regard to the influence upon its neighbors. "The States through whose ports the natural or artificial channels of trade principally passed, were able to exact a revenue from those which were less favorably situated for commercial purposes." It was on account of the difficulties and irritations growing out of these commercial regulations that a convention of commissioners from various States was held at Annapolis in September, 1786, which convention recommended the one that framed the present Constitution in the year 1787.

Commerce now Controlled by Congress.—As appears from this third clause, the whole control of the subject of commerce, both with foreign nations and among the several States, and also with the Indian tribes, is placed by the Constitution not with the States but with the general government. Under the Articles of Confederation, each State levied duties on imports and exports as it pleased, and this, not only as regarded foreign countries, but with reference to commerce between contiguous States. But now there can be no restrictions on trade between two States, and all duties on goods imported from other countries must be "uniform." The nation has the exclusive power over commerce, and without this it would hardly deserve the name of a nation.

"To regulate" commerce is to prescribe rules by which it is to be carried on. "With foreign nations" means with the people of those nations. Congress, and not the States, prescribes the rules of commercial intercourse between the people of the United States and those of foreign countries, and between the people of any one State and those of all the other States.

Extent of the Commercial Power.—"In the practice of the government, the commercial power has been applied to embargoes, non-intercourse, non-importation, coasting-trade, fisheries, navigation, seamen, privileges of American and foreign ships, quarantine, pilotage, wrecks, lighthouses, buoys, beacons; obstructions in bays, sounds, rivers, and creeks; inroads of the oceans, and many other kindred subjects; and, doubtless, includes salvage, policies of insurance, bills of exchange, and all maritime contracts, and the designation of ports of entry and delivery.

"Wherever the power of Congress extends, they are the exclusive judges of the proper reasons and motives for exercising it, and are not to be controlled by any allegation that it was done for a purpose not contemplated in the original grant. This commercial power has been employed for the purpose of prohibition, reciprocity, retaliation, and revenue—sometimes, also, to encourage domestic navigation and manufactures, by bounties, discriminating duties, and special privileges and preferences, and to regulate intercourse, with a view to mere political objects; and the right to do so has been sustained by the unequivocal voice of the nation." [1]

The Embargo of 1807.—In December, 1807, under the administration of Mr. Jefferson, an embargo act was passed. It provided "That an embargo be laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States." [2]

Under the power "to regulate commerce" Congress thus

[1] Farrar, page 328. [2] U. S. Statutes, II., page 451.

passed a law prohibiting every American merchant vessel from leaving port; and this, not for a limited period, but without limitation of time. This law was repealed, however, in March, 1809.

An act to prohibit the importation of certain goods from Great Britain and her colonies was passed in April, 1806; and one to interdict the commercial intercourse between the United States and Great Britain and France was passed in March, 1809. An act prohibiting the sending of lottery tickets from one State to another was held to be constitutional by a decision of the Supreme Court rendered in 1903.

Commerce with the Indians.—The power to regulate commerce with the Indian tribes is given to Congress. The exclusive right of preëmption to the Indian lands is with Congress, and neither States nor individuals can purchase lands from the Indians. An Indian tribe is not a foreign nation, but a people in a condition of dependence or pupilage, sustaining to the United States the relation of a ward to a guardian.

Interstate Commerce.—What is a regulation of interstate or foreign commerce has been determined by a long course of decisions by the United States Supreme Court in cases litigated before it. Obviously every State ordinance which in some remote manner affects commerce can not be held to conflict with the power vested, by this clause, in Congress. A State must make many regulations of local concern looking to the raising of revenue, and the protection of the life, health, morals, and commercial welfare of its citizens. The power to do these things is called the *police power*. Many laws made in the exercise of this power will to some extent affect interstate commerce, but that does not necessarily mean that they are void as conflicting with the power vested in Congress. The police power of the States is just as sacred as the commerce power of the United States. It is often hard to define the legitimate exercise of the two powers, and each case has to be decided by the courts upon its own merits.

There are several classes of laws which are subject to examination in connection with this clause.

1. Laws upon interstate subjects which, owing to the character of such subjects, *should* be uniform throughout the United States—in which uniformity is required.

2. Laws upon subjects which do not *require* but *permit* uniformity throughout the United States.

3. Laws upon subjects which do not permit, much less require, uniformity, such as harbor regulations and policing of steamboat landings.

State and National Laws on Interstate Commerce.—There are two views about the authority to regulate interstate commerce. The first view is that the power to regulate is exclusively in Congress and that no State regulations are valid even though Congress has not legislated upon the subject. Those holding this view, however, have also held a modified view that Congress can by legislation expressly adopt even in advance any legislation a State may enact upon a particular subject. It has been decided that Congress can adopt in advance the liquor laws which a State may enact, though affecting interstate commerce.

The second view is that interstate commerce is open to State regulation until Congress acts upon it or indicates that the subject is to be left free and open ; but when Congress acts, by passing laws, State legislation conflicting therewith is void.

The first of these views is the one generally followed by the United States Supreme Court. In applying it to the foregoing classification the following result is reached.

Subjects which do not permit uniformity are invariably left to State legislation unless Congress has legislated upon the subject, in which case the provisions of Congress override the State enactment.

Subjects which require uniformity are invariably within the exclusive power of Congress, and in no event have the States power to legislate upon them.

In subjects which permit but do not require uniformity it is not easy to state what is positively the law. The tendency of the United States Supreme Court decisions has been to keep these subjects also within the exclusive jurisdiction of Congress. The law, however, is not settled upon this class of cases.

A State can not grant an exclusive right to navigate one of its rivers or regulate it by tolls. It can, however, establish wharfage charges which are reasonable for that purpose and not in conflict with provisions of Congress. It can not make unreasonable quarantine regulations or charges, but can make reasonable ones for protection to the health of its own citizens. It can not tax the business of corporations engaged in interstate commerce, but it can tax their property. It can not make any distinction in taxation between the property of a corporation engaged in interstate business and one whose operations are confined to its own State. A State can, however, prescribe the conditions upon which a corporation chartered under another State shall be permitted to conduct its business within the State, provided the corporation is not engaged in interstate commerce. Insurance companies are thus compelled to make deposits in State treasuries and comply with other conditions. A law forbidding the citizens of a State to insure their property in other companies than those organized within the State is void as regulating commerce. A State tax on the gross receipts of a railway engaged in interstate commerce is void for being a regulation of that commerce. Requiring such railways to stop all trains at county seats is such regulation and therefore void. But a State law requiring all locomotive engineers to be examined as to eyesight is a valid law for protection to life and property.

The Interstate Commerce Act.—The first important general act for the regulation of interstate commerce by Congress was passed in 1887. This provided for a commission of five members to supervise interstate railroads. In 1906 the powers of the commission were enlarged, and their scope extended also to express companies, sleeping car companies, and petroleum pipe lines. The commission now consists of seven members, appointed by the President with the consent of the Senate, each holding office seven years, and drawing a salary of $10,000 a year. The president of the first

commission was the renowned constitutional scholar, Hon. Thomas M. Cooley, of Michigan.

The Interstate Commerce Commission is organized after the manner of a court of law and sits principally in Washington, D. C., but holds sessions all over the United States as occasion requires. It is, however, not a branch of the judicial department of the government, but of the executive. It is faintly analogous to the Court of Claims, which is vested with quasi-judicial powers, though really a branch of the legislative department and not a part of the judicial system of the United States. Cases of which the commission takes cognizance are heard like cases in court, and the United States courts and marshals are charged with the duty of serving subpœnas upon witnesses and with carrying into execution the decisions of the commission, by means of injunctions and other legal means.

The act declares that all railway rates must be reasonable. The commission is authorized to fix maximum rates between shipping points for the lines there operating. This is a legislative power vested in the commission.

Every interstate road must adopt a classification of freight and must adopt a schedule of rates for each class. It must file copies of these schedules with the commission and must post or keep them in all depots for inspection by the public. Rates can not be lowered or raised after adoption except after notice to the commission of the intention of the road to do so. Giving any preference in the form of rebate or otherwise to any person, firm, or locality is strictly forbidden and made unlawful. One feature of the law is the provision forbidding a railway to charge more for a short haul than for a long one which includes, as part of the distance travelled, the shorter one. Other provisions (enacted in 1906) forbid the giving of interstate passes except to employees, destitute persons, and a few others; and practically prevent railroads from engaging in the business of mining coal or producing any other product (except timber) anywhere for sale in other States.

The Pure Foods Act, 1906.—Congress has also begun

to control the quality of certain goods entering into interstate commerce. The act of June 30, 1906, forbids, under penalties, the shipment of adulterated or misbranded foods, drugs, and liquors from one Territory or State into another; specifies in detail many kinds of adulteration thus prohibited in goods entering into interstate commerce; and requires that food preparations entering into interstate commerce shall bear labels stating their ingredients.

The Law against Trusts.—By an act passed in 1890 every contract, combination in the form of trust, or conspiracy, in restraint of trade among the States or with foreign nations, is declared illegal. Actual or attempted monopoly of part or all of the trade between States is punishable by fine and imprisonment. The United States courts are given jurisdiction to enforce this act by injunction or other means. District attorneys may institute suits for this purpose. Property owned by such a combination may be seized in course of transportation. Under this act two large railroad associations, the Trans-Missouri Traffic Association and the Joint Traffic Association, were dissolved. They were associations of railroads for controlling and dividing the interstate commerce among their members and regulating the price of carriage.

By an act passed in 1894 every combination, conspiracy, trust, or contract is declared to be against public policy and illegal when made by two or more corporations either of which is engaged in importing any article from any foreign country, and when such combination is intended to operate in restraint of trade or of free competition in commerce or to increase the market price of any article imported or manufactured from such imported article. United States courts have the same power to enforce this statute as to enforce the act of 1890.

Most States now have statutes forbidding such contracts and combinations, formed by many manufacturers for the

purpose of controlling the market for their products and regulating prices. Such combinations are known as *trusts*.

Department of Commerce and Labor.—By act of February 14th, 1903, an executive department was established for the purpose of promoting the interests of commerce and the allied industries. The Bureau of Corporations in this department has power to investigate the organization and working of any trust or corporation engaged in interstate or foreign commerce, except those subject to the Interstate Commerce Act (p. 93), and for this purpose can compel the sworn testimony of witnesses and the production of books and documents.

Clause 4.—*To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;*

Citizenship.—Naturalization is the conferring of citizenship. By it an alien or foreigner is made a citizen. Neither the Constitution nor any act of Congress defines citizenship, but by the Fourteenth Amendment "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." "A citizen is a member of the body politic, bound to allegiance on the one side, and entitled to protection on the other." (Attorney-General Bates.)

Citizens are either native-born or naturalized. Every person born in the country is, from the time of birth, *prima facie* a citizen. An alien can become a citizen only by the process of naturalization prescribed by Congress.

On the 24th of June, 1776, the Continental Congress resolved, "That all persons abiding in any of the United Colonies, and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of such Colony." The Articles of Confederation, however, left jurisdiction over this subject to the individual States.

The objections to giving each State the power to frame naturalization laws for itself are obvious. One State might

confer the rights of citizenship after a residence of one year, another after two years, and another after ten; yet the Constitution provides that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." There was no difference of opinion in the Convention as to the propriety of giving to Congress the exclusive control of the matter.

In 1790 Congress passed an act requiring two years' residence before a foreigner could become a citizen. In 1795 the time was extended to five years, and in 1798 it was extended to fourteen years. But in 1802 it was reduced to five years, which is the time now required.

Mode of Naturalization.—The mode of naturalization requires, first, that the alien shall make, at least two years before his admission—it was three years by the act of 1802, but changed to two in 1824—a declaration, on oath, of his purpose to become a citizen of the United States, and to renounce all allegiance to any foreign prince or state; secondly, that when he applies for admission he shall sign in his own handwriting a petition to the same effect, also giving details of residence, names of wife and children (if any), etc.; thirdly, that the applicant shall be able to speak English, unless he has made a homestead entry on public land; fourthly, that he shall declare, on oath, that he will support the Constitution of the United States, and doth renounce all allegiance to any foreign prince or state; fifthly, that the court admitting him shall be satisfied, by the evidence of two citizen witnesses and otherwise, at a hearing at least ninety days after the filing of his petition, that he has resided five years within the United States, and one year in the State or Territory where the court is held, and that he has behaved as a man of good moral character.

By naturalization an alien becomes a citizen of the United States. He is thereby a citizen of any State where he shall reside.

The children of persons duly naturalized, being under twenty-one at the date of their parents' naturalization, shall be considered citizens, if residing in the United States.

The children of citizens of the United States shall be considered citizens, though born abroad.

If an alien who has made his declaration of intention to become a citizen die before he is actually naturalized, his widow and minor children may be naturalized by complying with the other provisions of the law, without making any declaration of intention.

No alien who shall be a native citizen or subject of any country with which the United States shall be at war at the time of his application, shall be then admitted to citizenship.

Soldiers and Sailors.—A soldier of the age of twenty-one years and upward, regularly discharged from the army of the United States, may be admitted to citizenship without a previous declaration of intention, and with a single year's residence.

A seaman, having served three years on a merchant ship of the United States after making a declaration, may be naturalized. After a declaration, a seaman shall be deemed an American citizen for purposes of protection.

An alien of twenty-one years or over who has served five consecutive years in the United States Navy or one enlistment in the Marine Corps and has been honorably discharged, shall be admitted to citizenship without a previous declaration of intention.

Expatriation.—The admission to citizenship of those who have been subjects of other governments, implies the right of expatriation. This right has been denied by some of the European states, and the claim maintained that American naturalized citizens still owe allegiance to the countries where they formerly resided. In July, 1868, an act of Congress was passed expressly declaring the right of expatriation, and that "All naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property

that is accorded to native-born citizens in like situations and circumstances."

Treaties have been made by the United States with a number of other nations, in which provision is made for the mutual naturalization of citizens, thus recognizing the right of expatriation. These treaties provide against the return of naturalized foreigners to their original country for residence while remaining subjects of the foreign country. A residence of two years in the original country is held to be the renunciation of naturalization in the adopted country.

Africans and Chinese.—Though the Constitution gives to Congress the whole control of the subject of naturalization, with no limitation as to those who may be admitted to citizenship, every law enacted, from 1790 to 1870, restricted it to whites. By act of July 14th, 1870, it was provided "That the naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent." As the original statute limited naturalization to white aliens, and the act of 1870 extended it to those of African descent, the question has arisen whether the Chinese may be naturalized. This was decided differently by different courts; some holding that the Chinese are white, others that they are not. In 1882 a law was passed declaring that no court should admit Chinese to citizenship. This act of 1882 also suspended for ten years the immigration of Chinese laborers to the United States, and was followed by a series of enactments excluding Chinese laborers from entering this country. These laws except from their operation Chinese merchants, travelers, diplomatic representatives, and students. No Chinese laborer who was not in this country in 1892 can lawfully be here now.

Congress and Suffrage.—Mr. Curtis, in his History of the Constitution, says, "The power that was given, by unanimous consent, over the subject of naturalization, shows the strong purpose that was entertained of vesting in the national authority an efficient practical control over the States in respect to the political rights to be conceded to persons not natives of the country." In a note he says: "I have called the naturalization power a *practical* control upon the States in the matter of suffrage. It is indirect, but it is effectual; for I

believe that no State has ever gone so far as, by express statutory or constitutional provision, to admit to the right of voting persons of foreign birth who are not naturalized citizens of the United States."[1] Mr. Curtis is, doubtless, right in his opinion that an alien ought not to be allowed to vote; but he is wrong in the statement that no State has extended the right of voting to persons of foreign birth not naturalized. In about a fifth of the States this right is enjoyed. The constitution of Indiana, for instance, permits an alien to vote who has been one year in the United States and six months in Indiana, and who has declared his purpose to become a citizen of the United States. The constitutions of Illinois and Ohio, however, restrict suffrage to citizens of the United States.

Aliens and Real Estate.—By the common law, an alien could not hold real estate; and in some of the States a special act of the legislature is necessary to enable an alien to hold such property. But other States have provided by statute that no difference in this respect shall exist between an alien and a citizen.

Naturalization removes the disabilities of alienage, and confers, with one or two exceptions, all the rights and privileges pertaining to the native-born citizen. A naturalized citizen can not hold the office of President or Vice President of the United States, nor can he be a representative or senator in Congress till he has been a citizen for a term of years.

Naturalization of Communities.—While this clause of the Constitution authorizes Congress to "establish a uniform rule of naturalization," and such a rule has been established, Congress has exercised the power of granting naturalization without regard to the rule. Foreign territory has repeatedly been incorporated into the Union by treaty and otherwise, and the inhabitants, of whatever race or description, clothed with the rights of citizenship. The President and Senate

[1] *History of the Constitution*, II., page 202.

have thus naturalized whole communities, without reference to the sections of the act prescribing the mode of naturalization. So Texas, with all its people, was admitted into the Union by joint resolution of Congress. As the general government has thus naturalized whole masses of people without any specific authority, the grant to establish a uniform rule has not been considered as exhausting the power of Congress over the subject.

In 1870 Congress passed a stringent law to punish crimes against the naturalization laws. Great frauds had been committed in some of the cities in the issue of naturalization papers, thus leading to the casting of many fraudulent votes.

Bankruptcy.—In English law a bankrupt was a trader who had committed an act of bankruptcy. The term "traders" included merchants and other persons engaged in trade, but not bankers, farmers, gentlemen, etc. A great many actions by a trader were declared to be acts of bankruptcy, such as fraudulent conveying of property, concealing property to avoid or obstruct the collection of debts, concealing one's self or leaving home for the purpose of avoiding one's creditors or the service of legal process. *Insolvency* is the condition of an excess of one's liabilities over his assets. In English law anybody could become insolvent but only traders could become bankrupt. Naturally insolvency usually preceded and coexisted with bankruptcy, but either might exist without the other, even among traders. A solvent trader might be adjudged to have committed an act of bankruptcy, while many insolvent traders never committed such acts.

State Insolvency Laws.—In popular usage in the United States bankrupt and insolvent are synonymous terms, but their legal significations differ. A *bankruptcy law* is a law discharging a debtor of existing contracts and obligations. The details of procedure and the conditions upon which debts are annulled vary in different statutes, but every bankruptcy law provides for the liquidation of otherwise binding con-

tracts. *Insolvency laws* are laws passed by States regulating the manner of proceeding against unfortunate debtors. Such laws can not affect citizens of other States. They can not impair any substantial right based on an existing contract or obligation, but they may change the mode of procedure for enforcing the contract, as by releasing a debtor from imprisonment. They may also regulate the manner of enforcing contracts made, or of collecting debts incurred, after the passage of the act. It is not always easy to determine whether an insolvency law does or does not impair the substantial rights of a creditor under a contract.

Before the adoption of the Constitution of the United States, the States passed bankruptcy laws, but the clause under consideration transferred this power to Congress and required such laws to be uniform throughout the United States.

In only the first of the bankruptcy acts passed by Congress has the English distinction been made between traders and other persons. The second act, passed in 1841, the third in 1867, and the fourth in 1898 apply to all persons alike owing debts. Each of these statutes also provides for voluntary bankruptcy. The first three were in force only about sixteen years.

The Bankruptcy Law of 1898.—Under the law of 1898, any person, except a corporation, who owes debts, may become a voluntary bankrupt by filing his petition in a United States District Court, asking to be so adjudged. Any person except a corporation, wage earner, or farmer may be adjudged an involuntary bankrupt for committing any of the following acts of bankruptcy : conveying, concealing, or removing any part of his property with intent to defraud or delay any of his creditors, giving any of his creditors a preference over the rest by conveying to them while insolvent any of his property or by permitting them to take legal action by which they acquire such preferences, making a general assignment of his assets for the benefit of his creditors, and admit-

ting in writing inability to pay his debts and willingness to be adjudged a bankrupt. This act gives the District Court of the United States jurisdiction over the subject of bankruptcy. The administration of the bankrupt's estate is carried out by a trustee who acts like an executor of the estate of a deceased person. The act also provides for referees, who are empowered to consider and pass upon all petitions, take testimony, and exercise certain general judicial powers. A referee's decision is always subject to review by the court.

Object of a Bankrupt Law.—A bankrupt law is intended for the benefit of both creditors and debtors. It benefits the creditors by securing among them an equitable distribution of the property of the debtor. It benefits the debtor by releasing him from hopeless insolvency, and giving him an opportunity again to engage in business. The bankrupt, after the various requirements of the law have been complied with, receives a "discharge" from his debts.

Bankruptcy in Europe.—It is to be feared that debtors, in our country, are released too easily from their obligations. "In England, bankruptcy is a more serious matter. The bankrupt not only loses credit; he also, to a great extent, loses caste. . . . In France, the lot of the bankrupt is still more severe; not only does he lose his social position, but the law prevents him from engaging in any other business on his own account till he has redeemed his outstanding obligations." [1]

Language of Mr. Mill.—But even the British laws are far too lenient, according to the opinion of an eminent writer. "It is seldom difficult for a dishonest debtor, by an understanding with one or more of his creditors, or by means of pretended creditors set up for the purpose, to abstract a part, perhaps the greatest part, of his assets from the general fund through the forms of the law itself. . . . To have been trusted with money or money's worth, and to have lost or spent it, is *prima facie* evidence of something wrong, and it is not for the creditor to prove, which he can not do in one case out of ten, that there has been criminality, but for the debtor to rebut the presumption by laying open the whole state

[1] Bowen's *American Political Economy*, page 211.

of his affairs, and showing either that there has been no misconduct, or that the misconduct has been of an excusable kind." [1]

The distinction between a legal obligation and a moral one must not be overlooked. The law may discharge the bankrupt from his debts, but there still rests upon him the moral obligation to satisfy the claims of his creditors, so far as it may be in his power. The legal discharge puts him in a position to accumulate again, and thus furnishes him the opportunity to provide the means with which to pay his debts in whole or in part. Some make this right use of the advantage which the law gives them, but many regard the legal discharge from their debts as a release, also, from their moral obligations. Bankruptcy is a test, though a severe one, of a man's real character.

Clause 5.—*To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;*

What is Money?—To Congress is here given the power to coin money. Elsewhere in the Constitution (Art. I., Sec. 10, Clause 1) the States are forbidden to "coin money," or "make anything but gold and silver coin a tender in payment of debts." According to the Constitution, then, *money is gold or silver, coined by the general government, and made a tender in payment of debts.* Whatever fails to possess these three characteristics is not strictly money. A promise to pay, whether by the government or a bank, though the law may make it legal tender, is not money, but only a promise to pay money. Gold as bullion,—that is, in any form but that of coin—is not money, though it may have the value of the same weight of gold coin.

The Spanish Dollar the Unit.—Under the Articles of Confederation, the power of coining money was possessed by Congress and the States jointly, though Congress had "the sole and exclusive right and power of

[1] Mill's *Political Economy*, II., pages 473, 476.

regulating the alloy and value of coin struck by their own authority, or by that of the respective States." The power had not been exercised either by Congress or the States prior to the Constitution. Coin of other countries was used, the Continental Congress regarding the Spanish dollar, or 'piece of eight," as the money unit. There was no official action on the subject till 1785, when Congress resolved that the dollar should be the money unit, and that the decimal system should be followed. A year later the dollar was defined by prescribing its weight in grains in each metal. But no coins were issued of either gold or silver.

The Coinage Act of 1792.—The first act of Congress under this clause was the coinage act of 1792. This prescribed what coins should be issued of gold, of silver, and of copper, and their respective weights. It provided also for coinage by the establishment of a mint at Philadelphia, where Congress was then in session. This has never been removed, though Washington became the seat of government in 1800. Branch mints have since been established in various places.

Both Gold and Silver Coins Legal Tender.—The coinage act of 1792 made both gold and silver coin legal tender for all sums. In the gold coins, which at first were three, the eagle (ten dollars), the half-eagle, and the quarter-eagle, there were $24\frac{3}{4}$ grains (Troy) of pure gold to the dollar. In the silver coins, which were the dollar, the half-dollar, the quarter, the dime ("disme" in the statute), and the half-dime, there were $371\frac{1}{4}$ grains of pure silver to the dollar. The silver coins contained just fifteen times as many grains of pure metal as the gold coins of the same amount, showing that in the judgment of Congress an ounce of gold was worth at that time in the markets of the world fifteen times as much as an ounce of silver. As debts might be paid in either gold or silver at the option of the payer, it was necessary that the two classes of coin should have, so far as possible, the same value.

To "Regulate the Value" is to Fix the Ratio.—Congress has power to "regulate the value of money." Were our money restricted to one metal, there would be no occasion for the exercise of this power. With gold as the only money, for

example, Congress would simply determine the number of grains the dollar should contain, but could do nothing to regulate or determine its value, or purchasing power. When, however, two metals are to be used as money, Congress must prescribe their respective weights ; and in this sense, but in no other, can it "regulate the value" of money. This was all that was done in 1792. The weight of the gold dollar having first been decided on, that of the silver dollar must be made to correspond ; that is, the ratio of the commercial values of the two metals must be preserved. To prescribe arbitrarily the relative weights would be monstrous ; for, as Jefferson says, "the proportion between the values of gold and silver is a mercantile problem altogether."

The Relative Value of Gold Increases.—After a few years gold began to increase in value relatively to silver, so that an ounce of gold was worth more than fifteen ounces of silver. In consequence, the gold coins began to disappear from circulation, being melted up or exported. To keep both metals in circulation as money it was necessary either to put less gold into the gold coins or more silver into the silver ones. The former method, which was the only just one, was adopted.

If gold had been the single standard, or *the* standard, the silver should have been made to correspond to it, and so the silver dollar increased in weight. But both metals being by law full legal tender were equal standards; when, therefore, the gold ceased to circulate, the silver became practically the single standard, and all contracts were made with reference to that. To have made a heavier silver dollar would have been unjust to all who had money to pay. To make a lighter gold dollar was strictly just to all.

Gold Coins Reduced in 1834.—This change was brought about in 1834. The gold coins were reduced from $24\frac{3}{4}$ grains of pure gold to the dollar to $23\frac{1}{5}$ grains. As the number of grains of pure silver in the silver dollar remained $371\frac{1}{4}$ as before, the ratio between the two metals was changed from 15 to 1 to that of 16 to 1.

The Relative Value of Silver Increases.—But presently the equilibrium was again disturbed, silver having become worth more than the one sixteenth part of gold. This was owing, in part at least, to the large amount of gold from the Australian and Californian mines. If both gold and silver were to be retained as full legal tender, the silver coins must be reduced in weight as those of gold were in 1834. There was another method, however,—to make gold alone the legal standard, and have the silver coins subsidiary. This method was preferred by the government; and in 1851 the Secretary of the Treasury recommended that the silver coins be reduced in weight, and be made legal tender for small sums only.

Silver Coin made Subsidiary in 1853.—A bill was accordingly prepared which became a law February 21st, 1853, providing that two half-dollars, four quarters, etc., should contain 345.6 grains of pure silver instead of 371¼; and that these coins should be a legal tender for only five dollars. The silver dollar was not mentioned in the act, and so remained as a nominal coin, but it formed from that time no part of the circulating money of the country. In this great monetary change the United States followed the example of Great Britain, where gold was adopted as the only standard in 1816, silver being made a legal tender for only forty shillings.

The Act of 1873.—Silver was thus practically demonetized in 1853, and from that time was used only as change, or token money. In 1873 a general coinage act was passed, which prohibited the coining of any coins not mentioned in the act. As the silver dollar was not named in the list, this legislation completed the demonetization of silver. The act also declared that the gold dollar should "be the unit of value."

Free Coinage of Gold but not of Silver.—Until 1853 there was free coinage of both gold and silver; that is, any owner of bullion could take it to the mint and have it coined for him, receiving in coin the full weight of the bullion. The

same is true still as to gold, but not as to silver. The government coins no gold for itself, but for the owners of bullion. But silver, whose metallic or commercial value is now much below its nominal value, is coined exclusively for the government, having been purchased in the open market.

The Silver Dollar Recoined in 1878.—From 1792 to about 1875 the ratio of the metallic values of gold and silver ranged between fifteen and sixteen to one. Silver then began to decline in relative value, so that in July, 1876, the silver in the old dollar of 371¼ grains pure was worth only 79¼ cents. There were also great fluctuations in its value, the variation amounting to twenty-five per cent within a period of five months. About this time the question of recoining the silver dollar, and making it again full legal tender, began to be agitated, and by the act of February 28th, 1878, this was done. The bill,—which declared that a silver piece then worth 93 cents should pass for a dollar—was vetoed by President Hayes, but was subsequently passed by the requisite majority in each house.[1]

Silver Dollars Virtually Subsidiary.—The act of 1878 required the purchase and coining of not less than two million nor more than four million dollars' worth of silver bullion a month. This bill, as it passed the House, provided for the free coinage of silver; it was called the Bland bill. But the Senate, under the lead of Mr. Allison, struck out that provision. The silver dollar coins, though full legal tender, were not placed on an equality with gold coins. The declaration of the act of 1873, that the gold dollar is "the unit of value," was not changed by the act of 1878. The silver dollars coined are virtually subsidiary, having been coined like the smaller coins from bullion purchased by the government, and being kept in circulation at more than their bullion value by the fact that they are practically redeemable in gold, which is the real money of the country.

[1] It was asserted that the decline in the commercial value of silver was owing largely to the omission of the dollar from the silver coins in 1873; and it was predicted that its restoration would soon bring back the value of silver to an equality with gold. The prediction has not been fulfilled. On the contrary, the silver dollar worth about 93 cents in 1878 has since fallen below 46.

The Sherman Act.—In 1890 Congress passed the Sherman Act. This law required the Secretary of the Treasury to buy four and a half million ounces of silver each month, paying for it with treasury notes redeemable in gold or silver at the option of the Secretary of the Treasury. The law contained a clause stating it to be "the established policy of the United States to maintain the two metals on a parity with each other at the present ratio" (16 to 1). The coining of silver dollars was to continue at the rate of 2,000,000 ounces per month until July 1st, 1891, the bullion purchased and not coined being stored in the treasury. The silver dollars coined under the Sherman Act are, like those coined under the Bland-Allison Act, practically subsidiary currency.

By an act of 1882 Congress had recognized a reserve fund of gold of the sum of $100,000,000 and over, previously fixed upon and set apart by John Sherman when he was Secretary of the Treasury, for the redemption of United States notes (greenbacks). The treasury notes were presented in great quantities in 1893 and were paid by the Treasury Department in gold. The gold thus drawn from the treasury was exported. To such an extent was the treasury depleted by these exportations that the $100,000,000 fund reserved for the payment of the greenbacks was encroached upon and diminished. This condition of affairs was followed by a period of great distrust, in financial circles, of the ability of the United States to maintain indefinitely the parity of gold and silver at the ratio of 16 to 1 by this process of redeeming its paper in gold. It was seen that as long as the Treasury Department was obliged to buy silver and pay for it in treasury notes the government must redeem the notes in gold in order to maintain the parity of the two metals; because silver, being cheaper, would not be accepted by holders of the notes. It was believed that the only way to end this strain upon the gold resources of the government was to cease buying the silver for which the treasury notes were being issued; but to do this it was necessary to repeal the purchasing clause of the Sherman Act of 1890. A special session of Congress was called for this purpose and assembled August 7th, 1893. The bill repealing the purchasing clause of the Act of 1890 passed the House August 21st, but it was debated in the Senate until October 30th before a vote was finally secured, when it was passed.

This Senate debate is memorable for its bitterness and length and the

great efforts made by opponents of the measure to prevent a vote being taken at all. According to the rules under which the Senate has always deliberated, a vote can not be taken on a proposed measure so long as any senator is ready and wishes to speak on it. The right of debate is unlimited. Under this rule the senators opposed to the repeal made voluminous speeches. Senator Allen of Nebraska by speaking continuously fourteen hours once destroyed an effort made by the advocates of repeal to prolong a single session until the opposing senators would from sheer physical exhaustion be forced to permit a ballot to be taken.

The passage of the Act of 1893 merely stopped the compulsory monthly purchase of silver.

Under the Sherman Act and before its repeal 168,000,000 ounces of silver were bought and $155,931,000 in treasury notes were issued for it; and of this silver $36,087,285 were coined. On October 31, 1911, the amount of treasury notes outstanding was $3,138,000.

Later Coinage of Silver.—By act of Congress, 1898, the Secretary of the Treasury was directed to coin the silver bullion purchased under the Sherman Act "into standard silver dollars as rapidly as the public interests may require, to an amount, however, of not less than one and one-half millions of dollars in each month." By the Finance Act of 1900 the dollars so coined are to be used in redeeming treasury notes, which are then retired and cancelled. Upon the cancellation of the treasury notes silver certificates are to be issued against the silver dollars so coined.

The Trade Dollar.—The change in silver in 1853, as appears from the report of the Secretary of the Treasury and from the discussions in Congress, was for the purpose of making gold the single standard. As the dollar coin remained on the statute-book, repeatedly between 1853 and 1873 the financial officers of the government urged Congress to drop that coin or reduce its weight to that of two half-dollars. When, in accordance with these recommendations, it was dropped in 1873, the "trade dollar," a silver coin a trifle heavier than the old dollar, was provided for trade with China. This was a legal tender at first, but not after 1876. It was an instance of a *coin* which was not *money*, not even token money. Early in 1887 Congress authorized standard silver dollars to be given in exchange for the trade dollars.

Alloy of Coins One Tenth.—All our gold and silver coins contain one tenth of alloy, and are thus said to be nine tenths fine. The value of the coin depends entirely upon the pure metal which it contains, though the weight usually given is the standard weight, *i.e.*, the weight of both pure metal and alloy. Thus, the gold dollar has 25.8 grains of standard and 23.22 grains of pure gold; and the silver dollar has 412½ grains of standard and 371¼ grains of pure silver. The silver coins less than a dollar have 385.8 grains (or 25 grams) of standard silver to the dollar. Prior to 1837 the alloy of our gold coins was one twelfth, and that of the silver coins a little more than one tenth.[1]

Subsidiary Coins.—All our gold coins and the silver dollar are legal tender for all sums; the smaller silver coins are legal tender for small sums only, and are hence called subsidiary coins. From 1853 to 1879 they were legal tender for $5.00; since 1879, for $10.00. These smaller coins, whose nominal value is much greater than their real, are redeemable when presented in sums of $20.00 and upwards, and thus are kept in circulation. The nickel and copper pieces called "minor coins," are legal tender for twenty-five cents. By act of 1900 the subsidiary silver is limited to $100,000,000 in the aggregate.

Gold and Silver Certificates.—Gold coin and bullion may, by the law of 1863, be deposited in the treasury, and certificates of deposit in sums of not less than $20.00 be received in exchange. In 1878 silver certificates were authorized in like manner for $10.00 and upwards in exchange for silver dollars. By act of 1886 silver certificates may be issued for one, two, and five dollars. These certificates are not legal tender, but are received for all government dues. By the Act of 1900 the Secretary of the Treasury is authorized to issue gold cer-

[1] The alloy of French coins is one tenth for gold and silver, except that the subsidiary silver coins are $\frac{835}{1000}$ fine. The alloy of British gold is one twelfth, and that of silver three fortieths.

tificates of $20 (changed to $10 in 1907) and upwards in exchange for deposits of gold coin, and the coin so received shall be held in the treasury for payment of such certificates on demand. If the gold in the reserve fund falls below $100,000,000 the issue of certificates shall be suspended, and the secretary is authorized to suspend the issue whenever the aggregate amount of United States notes and silver certificates in the general fund of the treasury exceeds $60,000,000. One fourth of the outstanding certificates must be of the denomination of $50 or less, and certificates payable *to order* of the denomination of $10,000 may be issued. Provision is made that ninety per cent in value of the silver certificates issued shall be in denominations of ten dollars and under.

Foreign Coin.—The value of foreign coin is "regulated" by establishing the rates at which it shall be received for duties on goods imported and in payment for public lands sold. Such rates were established in 1789, and have been modified from time to time to correspond with the changes in the coin of different nations. The rates depend on the metallic value of the foreign coin. Thus the sovereign, or pound sterling, of Great Britain, is taken at $\$4.86\frac{65}{100}$, because that is the exact value (expressed in American coin) of the gold it contains. Of course, Congress does not attempt to regulate the value of foreign *silver* coin. No such coin has been taken as money by our government for a long time. The commerce of the world is carried on wholly in gold.

No Foreign Coin Legal Tender Now.—Between 1793 and 1857 the coin of various countries was legal tender, though from 1819 to 1834 this was true only of silver. Since 1857 no foreign coin has been a legal tender. The smaller Spanish coins—the quarters, eighths, and sixteenths of the Spanish dollar—formed a large part of the silver change of the country till 1857, though our American quarters, dimes, and half-dimes were issued as early as 1794. In that year the Spanish coins were ordered to be taken at the treasury and at the

post office at only twenty, ten, and five cents respectively. They were not paid out, but recoined into American money.

Treasury Notes.—Under Clause 2 of Section 8, which authorizes Congress to borrow money, we have spoken of the issues of treasury notes. Such notes have been repeatedly issued by the general government, the notes being of various denominations, generally redeemable in a year or other short period, though sometimes with the time of redemption left indefinite. Generally they have borne interest, but not always. They have been receivable by the United States for all taxes and duties, and for public lands, and have been paid out to such creditors as were willing to receive them at par. In most cases they have been made payable to order, and have been transferable by delivery and indorsement, though some have been made payable to bearer and have been transferable by delivery.

Bills of Credit.—These treasury notes are what the Constitution calls "bills of credit." The States are forbidden to "emit bills of credit," as well as to "coin money," and to "make anything but gold and silver coin a tender in payment of debts." The Constitution places the coining of money among the powers of Congress, but says nothing in regard to their issuing bills of credit. In the draft of the Constitution, as reported by the Committee of Detail, Congress was authorized to "borrow money and emit bills on the credit of the United States." But the latter part was stricken out by a vote of nine States to two.[1]

Treasury Notes not Legal Tender till 1862.—Bills of credit were issued by the Continental Congress, but they were not made a legal tender, though this had been done by some of the States. Under the Constitution, no treasury notes were made legal tender till 1862. The act of February 25th of that year provided for the issue of notes to be "lawful money and a legal tender in payment of all debts, public and pri-

[1] Elliot, I., page 245.

vate, except duties on imports and interest on the bonds and notes of the United States." Great opposition was made to the legal tender feature of the bill, and it was acquiesced in only on the ground of extreme necessity. A redeeming feature of the law was the provision for the conversion of these notes into bonds bearing interest and payable in coin. Most unfortunately, this provision was repealed the next year.

Opinion of Mr. Madison and of Mr. Bancroft.—The constitutionality of the law has been sustained by the Supreme Court, though many believe that the framers of the Constitution intended to put the issuing of legal tender notes beyond the power of Congress. Mr. Madison says the Convention had "cut off the pretext for a *paper currency,* and particularly for making the bills a *tender,* either for public or private debts."[1] Says Mr. Bancroft, "Our federal Constitution was designed to end forever the emission of bills of credit as legal tender in payment of debts, alike by the individual States and the United States."[2]

History of the Legal Tender Notes.—The treasury notes issued under the act of 1862, known as "legal tenders," and "greenbacks," which bear no interest and have no specified time of payment, soon began to decline in value, being worth in July, 1864, only thirty-five cents to the dollar in gold. In the autumn of 1865 the value had risen to seventy cents. "An act to strengthen the public credit" was passed in March, 1869, in which "the United States solemnly pledges its faith to make provision at the earliest practicable period for the redemption of these notes in coin." Six years later, in January, 1875, Congress passed an act that the legal tender notes should be redeemed in coin on and after the 1st of January, 1879. Since that day these notes, which had been irredeemable for nearly seventeen years, have been paid in gold on demand. One thing more was necessary—that the notes, as they were redeemed, should be cancelled. But the

[1] Elliot, V., page 435. [2] Bancroft's *Plea for the Constitution,* page 5.

Congress of 1878, after restoring the silver dollar (in February), enacted (in May) that the legal tender notes, when redeemed, should not be destroyed but reissued.

The Secretary of the Treasury, in his Report for 1885, speaks of this act as "postponing indefinitely the fulfillment of the solemn pledge (made in 1869) not only of redemption, but also of payment of all the obligations of the United States not bearing interest." The amount of United States notes thus unpaid is $346,681,016. There is in circulation, besides this, a varying amount of the legal tender treasury notes issued under the provisions of the Sherman Act of 1890.

Legal Tender Notes are Promises Only.—There are those who seem to think that a legal tender note is really money, as much as a gold or silver coin. It passes current, it pays debts; why is it not money? The stamp of the government, they think, gives it value, and therefore it makes no difference of what material it is made. "Whether the coin shall be metal, leather, parchment, paper, or any other substance, is a question of expediency," it is said. The government, however, does not profess to have this power of making something out of nothing. Congress and the President know that these notes are simply evidences of debt due by the United States to the holders of them. Every such note is a promise to pay by the government. It is like a promissory note given by a private citizen, or a note issued by a bank. The difference is that a banknote is a promise to pay on demand, and the note of a person is a promise to pay on demand or at a specified time; while on the government note the time is indefinite.

Difference Between Gold and Greenbacks.—A gold eagle has upon it the stamp of the United States, which is a guaranty that it contains so many grains of pure gold. It bears its value upon its face,—ten dollars. But a legal tender note does not purport *to be* ten dollars; it is a mere certificate of indebtedness for that amount on the part of the government

to the holder of the note. "The United States will pay the bearer ten dollars." If this piece of paper were itself ten dollars, there would be no subsequent transaction requisite between the holder and the government. As between man and man it is given and taken as in full satisfaction of debt; but he who receives it holds it as a valid debt against the United States. When the government pays gold to its creditor, the debt is paid. When it pays him legal tender notes, it gives him a certificate of indebtedness which he may transfer to another. If the treasury notes in the hands of the people were veritable money, as truly so as gold, then the United States would not be indebted to those who hold them any more than it is to those who have gold eagles in their possession; and the Treasury Department would not report these treasury notes as a part of the national debt.

Bank Currency.—In authorizing Congress to "borrow money," as well as "coin money and regulate the value thereof," and in prohibiting the States from coining money and emitting bills of credit, the Constitution places in Congress the control of the whole subject of money; not only of gold and silver coin, but of all substitutes for them. This control, however, so far as it relates to the banknote currency of the country, Congress has not always exercised.[1] A bank of the United States was chartered February 25th, 1791, as a fiscal agent of the government, with a capital of ten millions, and to continue twenty years. On the 10th of April, 1816, another was chartered, with a capital of thirty-five millions, to continue for twenty years. Congress refused to recharter the first, and President Jackson vetoed the bill to renew the charter of the second. In 1841 two bills in succession were passed to establish a United States bank, but both were vetoed by President Tyler. Congress also authorized the establishment of banks in the District of Columbia.

[1] The Bank of North America at Philadelphia, chartered by the Continental Congress in December, 1781, was the first bank organized in the United States.

Banks and the States.—With these exceptions, the charters of the banks of the country, until 1863, were granted by the several State legislatures. So familiar had the people become with the currency furnished by these State banks, that when Congress passed, February 25th, 1863, the act to establish national banks, many supposed that the general government was usurping an authority which belonged to the States. On the contrary, we are forced to inquire where the States obtained the power to charter banks and thus provide the paper circulation of the country. "Is not the right," says Mr. Webster, "of issuing paper intended for circulation in the place, and as the representative of metallic currency, derived merely from the power of coining and regulating the metallic currency? Could Congress, if it did not possess the power of coining money and regulating the value of foreign coins, create a bank with power to circulate bills? It would be difficult to make it out. Where, then, do the States, to whom all control over metallic currency is altogether prohibited, obtain this power?" (In U. S. Senate, May 25th, 1832.)

The States established banks of issue because Congress tacitly left it to them in great measure. The authority was in the general government; but, as Congress did not choose to exercise it, the State legislatures went forward in this work till such time as the general government should see fit to provide a banknote currency for the whole people.

National Banks.—The act of June 3d, 1864, a substitute for that of February 25th, 1863, provides for a bureau of currency in the Treasury Department, at the head of which is a comptroller. Banking associations may be formed with power to issue bills, receive deposits, loan money, and perform the ordinary functions of banks. By an act of March, 1865, amended in July, 1866, a tax of ten per cent was levied on the circulation of the notes of State banks after August 1, 1866. This excluded these notes from circulation, and from

that time the bank currency of the country has consisted solely of the notes of national banks.

The circulation was at first limited to $354,000,000, and was distributed among the States and Territories according to wealth and population jointly; but both these provisions have been repealed, thus making banking free. Any number of persons not less than five may form a banking association under the law (as amended by the act of 1900), with a minimum capital of $25,000 in places not exceeding 3,000 population, $50,000 in cities of between 3,000 and 6,000 population, $100,000 in other cities up to 50,000 population, and $200,000 in cities of more than 50,000. The banknotes issued are secured by a deposit of United States bonds in the treasury, and the circulation of a bank can not exceed the par value of the bonds on deposit. An act of 1908 provides for the issue, in emergencies, of banknotes secured by the deposit of state, county, and city bonds and other securities.

Advantages of National Banknotes.—The advantages of this national banknote currency are (*a*) that the payment of the notes is guaranteed by the United States, so that no billholder can suffer loss; (*b*) that each bank must receive in payment the notes of all other banks; (*c*) that the notes are receivable for all dues to the United States except for duties on imports. The currency is thus made uniform over the whole country; a bill on a Texas bank passing as readily in the city of New York as one on a New York bank. As a banking system, aside from the security of the circulation, it has special safeguards, particularly in making every bank subject to frequent examination by a government examiner, and in requiring sworn statements of its actual condition.

Weights and Measures.—There is propriety in connecting weights and measures with money. By money we express the prices, or relative values, of all commodities, and by weights and measures we ascertain the quantities of commodi-

ties. As we need uniformity in money, so we need it in all measures of quantity. Moreover, the value of all money (gold and silver) is measured by its weight. Both subjects, therefore, were committed to Congress.

The importance of uniformity was urged by President Washington in his message to the first Congress; and various reports on the subject have been presented at different times. A very elaborate one was prepared by John Quincy Adams when Secretary of State, in 1821, but the recommendations were never embodied in a statute.

The Mint Standard.—By an act of Congress, May 19th, 1828, the brass troy pound weight, procured by the minister of the United States at London, was made the standard troy pound of the Mint of the United States. A series of standard weights corresponding to this was ordered to be made, from the hundredth part of a grain to twenty-five pounds. In 1836 the Secretary of the Treasury was directed to cause a complete set of weights and measures adopted as standards to be delivered to the governor of each State, that a uniform standard might be established throughout the United States.

The Metric System was legalized by act of Congress in July, 1866; and in 1873, 1876, and several later dates, appropriations were made for procuring metric standards for the States, and for the construction and verification of standard weights and measures for the customhouses and for the several States. In 1875 the United States united with the other principal governments of the world to establish a permanent international bureau of weights and measures; and from this bureau there were received (in 1889) copies of the international standard meter and kilogram. By a ruling of the Secretary of the Treasury (in 1893), these are regarded as the fundamental standards of length and weight, the yard being defined as $\frac{3600}{3937}$ of a meter, and the pound avoirdupois as $\frac{1}{2.2046}$ of a kilogram.

The legalizing of the metric system is a step toward inter-

national uniformity. The advantages of the use of the same weights and measures by all civilized nations are many and obvious; but it will be exceedingly difficult to change, in these respects, the habits of nations fixed by long usage.

Clause 6.—*To provide for the punishment of counterfeiting the securities and current coin of the United States;*

Securities.—The right to punish counterfeiting would follow from the right to coin money. By "securities" are meant all certificates of indebtedness, such as bonds, treasury notes, etc. The word stock, or stocks, is often used to denote a debt due by a government on which it pays interest. Thus we say that a person holds ten thousand dollars of United States securities, or twenty thousand dollars of Ohio stock.

Punishment for Counterfeiting.—The general government punishes the making and also the passing of counterfeit money or securities. It is held that the States may also punish the passing of counterfeits of United States coin or securities.

Congress has passed laws punishing the making, forging, or counterfeiting, and the passing, uttering, or publishing, of the coin of the country, the notes of the United States bank, the treasury notes, the fractional currency, the notes of the national banks, United States bonds, the excise stamps used for internal revenue, letters patent, postage stamps, stamped envelopes, postal money orders, and customhouse certificates; also the notes, bonds, etc., of foreign governments.

Making or passing counterfeit coin is punished by fine not exceeding $5,000, and imprisonment not exceeding ten years. In the case of bonds, notes, etc., the imprisonment may be fifteen years.

Clause 7.—*To establish post offices and post roads;*

Postal Matters under the Continental Congress.—A post office department was established before the Declaration of

Independence. In July, 1775, the Continental Congress made provision for such a department, and Dr. Benjamin Franklin was placed at the head of it, with the title of "Postmaster-General of the United Colonies." The Articles of Confederation gave Congress "the sole and exclusive right and power of establishing and regulating post offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office."

"By the authority of two short words, 'establish post-offices,' the government have instituted an establishment employing more men, controlling more patronage, and collecting and disbursing more revenue than sufficed, within a few years past, for the administration of the whole government."[1] In 1790 there were seventy-five post offices in the United States, and the expenditure for that year was $32,140. In 1911 there were about 60,000 post offices, and the expenditures were $237,648,926. The receipts that year exceeded the expenditures by over $200,000.

Post Office Department.—The Post Office Department is under a Postmaster-General and four Assistant Postmasters-General. Postmasters whose compensation is less than one thousand dollars are appointed by the Postmaster-General, and may be removed by him. In all other cases the appointment, which is for four years, is made by nomination of the President and confirmation by the Senate. Postmasters of this class, which numbers over four thousand, are paid salaries, as are also the clerks, assistants, etc., in large offices. The other postmasters (those who receive less than $1,000) are paid by the rents from boxes, and a commission on other office receipts and upon the stamps cancelled. Prior to 1864 all the postmasters received their compensation in this way. The amount paid for the transportation of the mail is larger than that paid to the postmasters. In only a few years has the income of the Post Office Department equaled or exceeded the expenditures. As the population of the country becomes more dense,

[1] Farrar, page 346.

the relative cost of transporting the mails may be expected to diminish.

Rates of Postage.—Mailable matter is divided into four classes; namely, first, letters; second, regular publications; third, printed books, circulars, pamphlets, etc.; fourth, merchandise. (1) *Letters*—postage two cents for each ounce or fraction of an ounce. On drop letters, two cents at free delivery offices; one cent at other offices. Postal cards, one cent. (2) *Regular publications,* issued as often as four times a year—for publishers and news agents, one cent a pound; but free to subscribers within the county, at other than free-delivery offices. For all other persons, one cent for four ounces. (3) *Printed books, circulars, pamphlets,* etc.—one cent for two ounces; limit of weight, four pounds, except for a single book. (4) *Merchandise* (matter not included in the above classes)—one cent each ounce; limit, four pounds.

Former Rates for Letters.—Letter postage is now two cents for any distance within the United States. Formerly the rates were much higher, and were different for different distances. From 1792 to 1845 letter postage ranged from *six* cents to *twenty-five,* according to distance. In 1845 it was reduced to *five* cents for 300 miles and under, and *ten* cents for greater distances. In 1851 it was made *three* cents for 3,000 miles, if prepaid, and *five* cents if not prepaid. For greater distances these rates were doubled. In 1863 a uniform rate was established for all distances—*three* cents—which in 1883 was reduced to *two* cents.

Until 1845 letters were single or double, according as there was one piece of paper or two; after that time a letter or parcel not exceeding half an ounce was deemed a single letter. Since July 1, 1885, a letter weighing one ounce is carried for two cents. Prior to 1851 there was no reduction for prepayment. In that year a difference of two cents was made, as stated above. In 1855 prepayment was required, and this continues to be the rule.

Stamps.—Postage stamps were introduced in 1847, but did not come into general use till 1855, when letters had to be prepaid. Stamped envelopes were furnished first in 1852. In 1872 postal cards were authorized, which are carried for one cent each, including the cost of the card. Double or reply postal cards were authorized in 1879. In 1898 private mailing cards were admitted to the mails at one cent postage.

Registered Letters.—In 1855, for the greater security of valuable letters, the Postmaster-General was authorized to establish a plan for *registration.* A fee of ten cents besides the regular postage is charged for registering a letter. The government takes special charge of such letters, but does not hold itself generally responsible if they are lost. In 1897 Congress authorized the Postmaster-General to prescribe rules under which persons might be indemnified out of the postal revenues for valuable matter lost in the mails. The matter must be registered, and the limit of indemnity is twenty-five dollars or the actual value of the article when that is less than twenty-five dollars.

Money Orders.—In 1864 the *postal money order* system was established. This enables one to send money by depositing the amount with a postmaster, and receiving an order on the postmaster of the place where his correspondent lives. A small fee is charged, according to the amount of the order.

Free Delivery.—In 1863 the Postmaster-General was authorized to provide for the *free delivery* of letters by carriers, in cases which, in his judgment, might justify it. In 1865 the system of free delivery was required to be established in every place containing a population of fifty thousand, and at such other places as might be thought best. In 1873 letter carriers were authorized in all places containing not less than twenty thousand inhabitants. In 1887 free delivery was authorized for places of not less than ten thousand inhabitants, or from post offices whose revenue is not less than ten thousand dollars. Provision is made for *immediate delivery*

of letters bearing a special extra stamp of ten cents, within the carrier limits of a free delivery office, or within one mile of any other office.

Rural Free Delivery.—The first experiments in rural free delivery were made in 1896 in forty-four different localities, and now there are more than forty thousand established routes in the United States. The system brings the mail to the door of the farmer, just as the free delivery system in the cities brings the merchant's mail to his store. The cost of the service is more than $40,000,000 a year, which is about five times the amount of postage collected on the rural mail routes.

Unclaimed Letters.—Letters unclaimed for a certain time are advertised; if not called for, they are sent to the Dead-letter Office. Here they are opened and returned, if possible, to the writers. The name and address of the writer upon the envelope secures its return to him if not called for; in this case it is not sent to the Dead-letter Office.

The Franking Privilege, or privilege of sending and receiving mail matter free, was formerly enjoyed by the President, Vice President, the Cabinet officers, the members of the Senate and House of Representatives, the delegates from the Territories, and some others. In general, it was limited to the term of office, but senators and representatives could retain it till the December following the expiration of their term. To each of the first four Presidents it was voted for the remainder of his life, and subsequently it was conferred for life on all ex-Presidents. It has also been voted to the widows of the Presidents during their lives. In February, 1873, the franking privilege was abolished, the act taking effect the 1st of July following: but modifications have since been made. The act of March, 1877, as amended by acts of 1879 and 1884, provides that letters and packages on government business may be sent free by all officers of the United States government (not including members of Congress), and that senators and representatives may receive and send free all documents printed by Congress. In 1895 the franking privilege was extended to the official correspondence of senators and representatives.

Unmailable Matter.—It is generally supposed that every citizen has the right to use the mails for the transmission of his correspondence; but

in fact this right is subject to some limitations. Congress has the power to prescribe what is mailable matter, and it has done so, in a negative manner, by enacting that indecent, obscene, or fraudulent matter shall not be transmitted. It has also empowered the Postmaster-General to order any postmaster to withhold the mail addressed to any person or firm conducting a business which he is satisfied is a fraudulent one. This is a great power in modern times when the right to use the public mails is so vital to the conduct of all intercourse. It has been said by some of the courts that the use of the mails is a privilege and not a right, and that Congress can withhold it from any class of people under its power to prescribe what is mailable matter. The constitutionality of this statement of law may be questioned. It may also be questioned whether it would not be better to withhold such great power from executive hands and leave the laws limiting the use of the mails to be applied by the courts, according to their usual procedure. By thus postponing executive action until the fact of fraud be ascertained by the courts, and confining such action to execution of the findings of the courts, Congress would adopt a course more in harmony with the genius of our institutions and the principles on which the government was established.

Mail Routes.—Obstruction of the mails is forbidden under heavy penalties, as is the carrying of mail matter outside of the mails by public carriers, except in stamped envelopes.

In 1825 it was enacted "That no other than a free white person shall be employed in conveying the mail." This disqualification continued for forty years.

Postal Savings System.—By act of Congress in 1910, a postal savings system was established, under the control of the Postmaster-General, Secretary of the Treasury, and Attorney-General. The first depositories were opened in 1911, and the system was rapidly extended to all the more important post offices. In less than a year the deposits had grown to $11,000,000. The depositors receive two per cent interest, and the funds are loaned by the government, at a slightly higher rate, to banks giving suitable security.

Post Roads.—The power to establish post roads has been interpreted to include the power of making internal improvements. In 1803 Congress authorized three per cent of the

net proceeds of the sale of public lands in the State of Ohio to be paid to that State for the construction of roads. In 1806 an act was passed for the construction of the *Cumberland Road*—more commonly called the *National Road*—from the River Potomac to the Ohio. Both these acts were approved by Mr. Jefferson, as President, though in one of his messages he expresses the opinion that Congress, under the Constitution, does not possess the power of making roads. While doubting the existence of the power, he appeared to favor an amendment to the Constitution conferring it upon Congress.

Proposed Government Control of Telegraphs.—As the object of granting to Congress the power to establish post offices and post roads was to give them the control of the transmission of correspondence, it is claimed that the electric telegraph should be managed by the government. The control over this agency, it is said, can be abdicated by the government with no more propriety than that over correspondence by railroad or steamboat. The subject has been much discussed in this country, and congressional committees have reported favorably upon it. Most of the governments of Europe manage the telegraph by their own officials, and their experience is said to be satisfactory.

Clause 8.—*To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;*

This clause authorizes Congress to issue *copyrights* to authors, and *patents* to inventors. There is no limitation to science in the strict sense of the word, nor to the useful as distinguished from the fine arts. All books, maps, charts, musical compositions, engravings, photographs (or negatives), chromos, statues, etc., whatever the subject may be, are included, and so are all inventions. There are many copyrights

and patents issued which promote the progress neither of science nor of the useful arts. But there can be no question as to the propriety of giving to authors and inventors the exclusive right for a limited time to their works.

Copyrights.—The exclusive right of an author to his writings is secured to him by giving him a copyright—that is, the exclusive right to print, publish, and sell them. His unpublished writings are clearly his own property. He needs no copyright for them.

Term of a Copyright.—Prior to the adoption of the Constitution, the States granted copyrights, and the first act of Congress on the subject recognized the rights thus granted. The first law was enacted in 1790, and gave to the authors the exclusive right to their works for fourteen years, with liberty of renewal for a like period. In 1831 the term was made twenty-eight years, with the right to renew for fourteen years longer. In 1909 the term of the renewal was increased to twenty-eight years. If the author has died, the renewal may be made by the widow or children.

Method of Obtaining a Copyright.—A copyright is obtained as follows: The book is printed, containing the copyright notice, and promptly after publication two copies of the book are sent to the Copyright Office, Library of Congress, with an application for registration. A money order for one dollar is sent for registering the work and for a certificate of registration. For each additional copy of the certificate fifty cents is required.

The copyright law includes under its protection not only books, but also maps, dramatic and musical compositions, engravings, prints, photographs, paintings, and statues.

To make one's copyright monopoly enforceable, notice of the copyright must be inserted on the title page, or next following page, of every copy of the book, or such notice must be inscribed upon each map, engraving, etc., as the case may be. The usual form of this notice is as follows: "Copyright, 19—, by A. B."

The copyright monopoly is not enforceable until the two copies of the work have been deposited. If there are different editions of the work issued at the same time, the two copies deposited must be of the best edition The penalty for failure to send these copies if demanded is one hundred dollars.

Until 1870 the copyright was issued by the clerk of the District Court of the United States. In books printed early in the nineteenth century, the copyright entry on the page following the title page was full and formal, sometimes covering the entire page. The copies of books and other articles for which copyrights were obtained were kept in the Department of State till 1859, when they were transferred to the Department of the Interior. In 1870 they were placed under the control of the Librarian of Congress.

A copyright is assignable in law, but the assignment must be recorded in the Copyright Office within three calendar months after its execution in the United States or six months after its execution in foreign countries. The mode of securing a renewal of a copyright is the same as for obtaining the original; it must be done within one year before the expiration of the first term.

In 1891 the laws were so amended as to permit copyright to foreigners on the same basis as to citizens in cases where the nation of the foreigner permits copyright to American citizens. This law does not authorize the owner of copyrights issued under it to import the books from foreign countries. In order to obtain the monopoly offered by the law he must have the type set in the United States.

Patents.—Provision was made by Congress in 1790 for giving to inventors the exclusive right to their discoveries. From that time to the present patents have been issued, but the laws governing them have been much altered.

At first, applications for patents were made to the Secretary of State, and the decision was made by a Board consisting of the Secretary of State, the Secretary of War, and the Attorney-General. In 1793 the Secretary of State alone was authorized to issue patents.

The Patent Office.—In 1836 an office, or bureau, was created in the Department of State, under the name of the Patent Office, the chief officer being styled the Commissioner of Patents. From that time, patents have been issued by the

Commissioner. The Patent Office was transferred to the Department of the Interior in 1849, when this latter department was created. Originally patents were signed by the President of the United States; then by the Secretary of State and the Commissioner of Patents; now by the Secretary of the Interior and the Commissioner.

Term of a Patent.—The term for which a patent was valid was fourteen years originally, but in 1870 it was made seventeen years. It is competent for Congress to extend the time of a patent, whether application be made before or after the expiration of the original term.

In 1836 the power to extend for seven years if the patentee had failed to receive a suitable return for his time, ingenuity, and expense, was conferred on a Board consisting of the Secretary of State, the Commissioner of Patents, and the Solicitor of the Treasury. But such extension must be granted before the expiration of the time for which the patent was originally issued. Since 1848 the power to extend in such cases has been exercised by the Commissioner.

Prior to the formation of the Constitution the issuing of patents, as well as the granting of copyrights, was lodged in the several States. But while copyrights were granted, at least in some of the States, by general legislation, no patents were issued except by special legislative acts.[1]

Models.—When application is made for a patent, a model of the article may be required by the Commissioner to be deposited in the Patent Office. There has gradually been gathered in this way a vast collection of models and specimens, making the Patent Office at Washington a place of resort to most who visit the national capital. Of late years it has become customary to require a model to be deposited only when necessary to a correct understanding of the article by the Commissioner.

In 1836 the building in which the models were contained was burned, and many of them were destroyed; but Congress made an appropriation

[1] Curtis, II., page 339.

of $100,000 to procure duplicates of those which were the most valuable. The present buildings extend over two entire blocks of the city of Washington.

Application for a Patent.—The applicant for a patent must make oath that he believes himself to be the original inventor of that for which he seeks a patent; he must file a full description of the same, and, in all cases admitting it, must present drawings. A prior patent by the inventor in a foreign country does not debar him from receiving a patent here, provided that application is made for it within seven months of the application for the foreign patent.

Fees.—The fees in the Patent Office are, on filing the application for a patent, fifteen dollars; on issuing the patent, twenty dollars; on application for extension of a patent, fifty dollars; on granting an extension, fifty dollars. Patents may be granted for *designs* as well as for machines. Since 1870 *trade-marks* have been registered at the Patent Office. In 1879 the Supreme Court decided that Congress could not control the use of trade-marks under this clause of the Constitution; and since then only those trade-marks used in foreign commerce, or commerce with the Indians, have received the protection of the general government. Trade-marks, however, are protected by State laws in a large number of States.

Receipts and Expenses.—The receipts of the Patent Office are usually more than the expenditures, though there have been exceptional years. From the beginning up to 1910, the number of patents granted was 974,033. Comparing the years 1840 and 1910, we find a very remarkable increase. Thus, in 1840 the applications were 735, and in 1910 the number was 64,629; in 1840, patents issued, 458; in 1910 the number was 35,930; in 1840, the receipts and expenditures were respectively $38,056 and $39,020; in 1910 they were $2,025,536 and $2,005,711.

Annual Report.—The Commissioner of Patents makes an annual report, giving, among other things, a list of all patents granted, with the names of the patentees. Specifications and drawings of all the inventions are also published. The Patent Office Reports now form many volumes,

and constitute a record of the industrial progress of the country. For a number of years prior to 1863, one volume of the annual report was devoted to Agriculture; but in 1862 a Department of Agriculture was established, with a Commissioner at the head of it, and the duty of making an annual report on Agriculture was transferred to this Commissioner. In 1871 the publication of the specifications and engravings was discontinued in connection with the annual report of the Commissioner of Patents, and published monthly in a separate volume. A weekly Gazette was established, containing lists of patentees and patents issued, together with abbreviated descriptions and drawings, and decisions of the office on important points of procedure, and important decisions of the courts.

Patents are assignable, but the assignment must be recorded in the Patent Office. All patentees, and those making or selling patented articles under them, must cause the word "patented," with the date of the patent, to be affixed to each article, that the public may have notice of its character.

Clause 9.—*To constitute tribunals inferior to the Supreme Court;*

United States Courts.—The Constitution itself provides for the Supreme Court (Art. III.), but leaves to Congress the question of the inferior courts. Congress, at its first session, established two tribunals inferior to the Supreme Court, called the Circuit and District Courts; in 1891 it established a third, called the Circuit Court of Appeals; and in 1911 it abolished the ordinary Circuit Courts. The Court of Claims was established in 1855, and other special courts at later dates. All these will be considered under Article III.

Clause 10.—*To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;*

Piracy is robbery at sea. The common law recognizes and punishes it as an offense against the universal law of nations; a pirate being deemed an enemy of the human race. The Continental Congress, in 1781, declared death to be the

punishment for piracy. In 1790 an act was passed by Congress providing for the same punishment. In 1820 Congress passed an act which declared it to be piracy to land on a foreign shore and seize negroes or mulattoes, or decoy them on board vessels, with intent to make them slaves.

Congress may *define* as well as punish piracy. Under this clause Congress has made the slave trade piracy—it has extended the definition of piracy to include what some nations may not regard as piracy. Before Congress could punish offenses against the law of nations it must define such acts or declare them to be such offenses.[1]

Felony.—At common law that was considered felony which occasioned the forfeiture of lands and goods, and for which the punishment of death might also be inflicted. Capital punishment does not necessarily enter into the definition of felony, yet the idea of felony is so generally connected with that of capital punishment that it is difficult to separate them.[2]

By *high seas* is meant, in general terms, the ocean, whose waters are common to all nations.

A nation is responsible for its citizens, and must punish them if they interfere with the rights of other nations; otherwise, there would be retaliation, and friendly relations would be disturbed. The Constitution, therefore, gives to Congress authority to define and punish offenses against the law of nations.

Clause 11.—*To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;*

The power to declare war is the power to decide whether or not there shall be war in a given case. As reported by the Committee of Detail, the expression was "to make war." This power belongs to the sovereignty of a nation. It is one of the

[1] Wheaton's *International Law*, § 124. Curtis, II., page 331.
[2] Tiffany's *Treatise on Government*, page 241.

highest acts which any government can perform, involving interests of the greatest importance, and affecting the property and lives of the people. In Great Britain the power to declare war is the exclusive prerogative of the Crown. Mr. Pinckney proposed in the Convention that it should be in the Senate ; so Mr. Hamilton also ; Mr. Butler proposed that it should be in the President.

Action of Congress in our Wars.—In two of the three wars in which the United States has been engaged, there was a formal declaration of war ; in one, war was otherwise recognized as already existing. Thus, in 1812 it was enacted "That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories." On April 24th, 1898, it was enacted "That war be and the same is hereby declared to exist, and that war has existed since the twenty-first day of April" between the United States and Spain. In 1846 the preamble of the act of Congress says, "Whereas, by the act of the Republic of Mexico, a state of war exists between that government and the United States." In 1798 Congress declared the United States to be freed and exonerated from the stipulations of the treaties with France, because that power had repeatedly violated the treaties and refused all reparation. A few days later an act was passed authorizing the President to instruct the commanders of armed vessels to capture any French armed vessels. But a change in the French government finally averted open war.

The Civil War.—In the case of the civil war there was no act of Congress declaring war, as war is an armed conflict between *nations*. The act of July 22d, 1861, is entitled "An act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property." The preamble recites that certain of the forts, arsenals, and other property of the United States had been seized, and other

violations of law committed and threatened, and the act authorizes the President to accept the services of 500,000 volunteers. The conflict assumed the magnitude and proportions of war, and those in insurrection were recognized by various nations as belligerents, though not as an independent state or nation.

The Philippine Insurrection.—By the treaty of Paris, in 1899 the Philippine Islands passed under the sovereignty of the United States. Some insurgent Filipinos, however, continued in arms and directed against the forces of the United States the hostilities in which they had formerly been engaged against Spain. An army of about 40,000 men, regulars and volunteers, was transported to those islands by the President without any special authorization of Congress, for the purpose of suppressing the hostilities. The insurgents were never recognized as belligerents by any other nation and war was never declared against them or formally recognized by the United States as existing.

The Chinese Disorders.—During the Boxer outbreak in China in 1900 the United States, coöperating with several other powers, sent vessels of the navy and several regiments of soldiers to rescue our minister and protect American citizens in China. The allied forces occupied Tientsin and Pekin, and their operations assumed the magnitude and character of war; but the action of the American force was by direction of the President alone, without any action on the part of Congress.

Letters of Marque and Reprisal.—The word *marque* signifies landmark or boundary, and *letters of marque* denote the commission issued to a private person, authorizing him to pass the frontier and take the persons or property of the subjects of another nation from which injury has been received. The word *reprisal,* meaning a retaking, indicates the purpose for which the commission is issued. A vessel bearing such letters is called a privateer. The law of nations recognizes the right of one nation to take this mode of obtaining redress from another ; but in 1856 and later years almost all civilized nations have agreed among themselves to abolish privateering. The United States has not acceded to this agreement, but in the war with Spain (1898) privateering was not allowed. Let-

ters of marque have sometimes been issued before a declaration of war. They have prevented some wars and have occasioned others.

Letters of marque were authorized by Congress in the time of the civil war, but none were issued by the President. They were used in the war of the Revolution and in the war of 1812.

The rules concerning captures are not limited to those made beyond the nation's territory, but apply also to the property of enemies found within the territory. The Supreme Court has decided that these rules are an express grant to Congress of the power of confiscating enemy's property found within the territory at the declaration of war.[1]

Clause 12.—*To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;*

Powers under Articles of Confederation.—Under the Articles of Confederation, Congress could declare war but could not raise armies. Congress had power only "to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State."[2] "The experience of the whole country, during the Revolutionary War, established, to the satisfaction of every statesman, the utter inadequacy and impropriety of this system of requisition. It was equally at war with economy, efficiency, and safety."[3]

Powers under the Constitution.—This clause in the present Constitution gives the power to raise and support a standing army, or "the military peace establishment of the United States," and the large armies necessary in times of war. Five times in our national history, since the war of the American Revolution, has it been necessary to call out large bodies of men: in the war with Great Britain in 1812, in that with

[1] 8 Cranch, page 110. [2] Articles of Confederation, Art. IX. [3] Story, § 1179.

Mexico in 1846, during the civil war, in the Spanish war, and in the Philippine insurrection. The number of men called into the service of the government in the civil war was vastly greater than in any of the others. There were over a million of men in the Army of the United States at the close of the war.

The Draft Act.—By act of March, 1863, provision was made for enrolling and calling out the national forces. Congress enacted that all citizens, and those who had declared their purpose to become such, between the ages of twenty and forty-five, should, with some exceptions, constitute the national forces, and should be liable to perform military duty when called out by the President. It was under this act that men were drafted. The quotas to be drawn were assigned to the different districts, taking into consideration the number of volunteers and militia furnished by them respectively.

By act of April 22d, 1898, the military forces of the United States are declared to consist of all able-bodied men between the ages of eighteen and forty-five years.

The Regular Army.—There was a small standing army at the time the Constitution was formed. The organization has been continued to this time. By act of Congress of July, 1866, the regular army was to consist of five regiments of artillery, ten of cavalry, and forty-five of infantry. Of general officers there were one General, one Lieutenant General, five Major Generals, and ten Brigadier Generals. The army was reduced after 1866 to 27,000. It was provided in 1870 that no new appointments should be made of Major Generals or of Brigadier Generals till the number should be below three and six respectively; and that then the number of Major Generals should not exceed three, or that of Brigadier Generals exceed six. It was also provided in the same year that the offices of General and Lieutenant General should cease with the officers then in office.[1] In 1898 the regular army was increased to about 60,000. The law of 1901 made the army con-

[1] Since 1882 all officers are retired at the age of sixty-four.

sist of fifteen regiments of cavalry, a corps of artillery (about 150 batteries), thirty regiments of infantry, three battalions of engineers, one Lieutenant General, six Major Generals, fifteen Brigadier Generals, and other officers; and provided that the number of enlisted men should not exceed 100,000. In 1907 the artillery was separated into a corps of coast artillery and six regiments of field artillery.

Offices of General and Lieutenant General.—The office of Lieutenant General was created in 1798, and General Washington received the appointment. This was abolished and the office of General was created in 1799, and this was abolished in 1802. In 1855 the office of Lieutenant General was revived, that it might be conferred by brevet on General Winfield Scott. In 1864 General Ulysses S. Grant was appointed Lieutenant General, and became the highest military officer under the President. The office of General was revived in 1866, and General Grant was appointed to the office. Major General William T. Sherman was then appointed Lieutenant General. On the election of General Grant to the Presidency, Lieutenant General Sherman was made General, and Major General Philip H. Sheridan Lieutenant General. Several years after General Sherman's retirement in 1883, Lieutenant General Sheridan was made General just before his death in 1888. John M. Schofield became Lieutenant General February 5th, 1895. He was retired September 29th, 1895. On June 8, 1900, Major General Nelson A. Miles was made Lieutenant General.

The appropriation is limited to two years, which is the congressional term. This gives the virtual control of the army to the people.[1]

Clause 13.—*To provide and maintain a navy;*

Department of the Navy.—There was no opposition in the Convention to giving to Congress this power, but in some of the State conventions much hostility was manifested. The Department of the Navy was not established till 1798; the general charge of the naval forces and the matters pertaining

[1] For more than a century preceding the American Revolution the term of two years had been the period of appropriations for military purposes in Great Britain.

to naval affairs having been up to that time committed to the Department of War, which had been established in 1789. It was not till the brilliant naval achievements during the war with Great Britain that all jealousy disappeared, and the desire to make our navy equal to that of other nations was manifested by the whole nation. With an immense seacoast on both oceans, and with a great commerce with all nations, the United States needs a strong naval force for the protection of our maritime interests.

The Navy Department has been, from its establishment in 1798, under the charge of a Secretary.

The various officers of the navy are as follows, with their rank corresponding to that of the following officers of the army; but generally one or more of the highest four ranks are dispensed with. For instance, in 1900 there were no Vice Admirals or Commodores on the active list.

Navy.	*Army.*
Admiral.	General.
Vice Admiral.	Lieutenant General.
Rear Admiral.	Major General.
Commodore.	Brigadier General.
Captain.	Colonel.
Commander.	Lieutenant Colonel.
Lieutenant Commander.	Major.
Lieutenant.	Captain.
Lieutenant, junior grade.[1]	First Lieutenant.
Ensign.	Second Lieutenant.

Grades in both army and navy identical with some of these were resolved on by the Continental Congress in 1776.

Until 1862 the office of Captain was the highest recognized by law. A Captain commanding two or more ships was called a Commodore by custom, and this title, when once applied to an officer, was usually continued.[2] In 1862 the offices of Rear Admiral and Commodore were created, in 1864 that of Vice Admiral, and in 1866 that of Admiral. By act of January 24th, 1873, Congress provided that when the offices of Admiral and Vice Admiral became vacant the grades should cease to exist. Under

[1] Before 1883, officers of this rank were designated as *masters*.

[2] Gillet's *Federal Government*, page 335.

this law the office of Vice Admiral expired with the death of Stephen C. Rowan, March 31st, 1890; that of Admiral with the death of David D. Porter, February 13th, 1891. On March 2d, 1899, Congress revived the rank of Admiral of the Navy, and George Dewey was appointed to it; the act provides that the office shall cease to exist when it is vacated by death or otherwise. This action was in recognition of Dewey's victory over the Spanish in Manila Bay, May 1st, 1898. The act of March 3d, 1899, abolished the rank of Commodore, except in the retired list, and increased the number of Rear Admirals.

Clause 14.—*To make rules for the government and regulation of the land and naval forces;*

Rules for Army and Navy.—The power to declare and carry on war involves that of providing armies and navies, and that of governing the forces thus raised. Rules for the government of these forces have been made by Congress in accordance with this clause.[1] In 1806,[2] an act was passed establishing the Articles of War for the government of the army; but their provisions have been altered by a number of later acts. Every officer must subscribe these articles, in number a hundred and twenty-eight; they are read to every recruit at the time of enlistment, and they are read and published every six months to every garrison, regiment, troop, or company.

The Articles for the Government of the Navy now in force were enacted in 1862,[3] and have been modified slightly at later dates.

Punishments.—For minor offenses in the navy the commanding officer may inflict such punishments as reprimand, suspension from duty, arrest, or confinement, none of which shall continue longer than ten days, except a further period be necessary to bring the offender to a court-martial. For

[1] Our first code of Articles of War, however, was adopted by the Continental Congress in 1775. This was replaced in 1776 by another, which with slight modifications remained in force till 1806.

[2] April 10th. [3] July 17th.

slight offenses in the army, captains of companies may take away some privilege or impose extra duty ; for offenses somewhat more serious, summary courts may sentence to confinement at hard labor for not more than one month, or impose fines of not more than one month's pay. For greater offenses, both in the army and in the navy, a trial is held before a court-martial, and such punishments may be inflicted as the court may pronounce, even to the taking of life. For capital punishment and in some other cases the approval of the President is necessary. Until 1850 flogging was one of the punishments inflicted in the navy, but in that year it was abolished in the navy and on board vessels of commerce. Flogging in the army was prohibited in 1812, but in 1833 an exception was made in the case of desertion. In 1861,[1] however, it was abolished.

Parliament always asserted its right to make rules and regulations for the government of the army on the ground of the subordination of the military to the civil power. The present British and American rules and regulations are founded upon the code which Gustavus Adolphus of Sweden established in his armies in the seventeenth century.

Clause 15.—*To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions ;*

Clause 16.—*To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;*

The Militia are distinguished from the regular army. They are the citizen soldiers of the country, liable to be called out in cases of emergency. These clauses virtually give Congress the whole power in regard to the militia. In 1792[2] an act

[1] August 5th. [2] May 8th.

was passed "to provide for the national defense by establishing a uniform militia throughout the United States." It provided for the enrolling of "every free able-bodied white male citizen of the respective States" between the ages of eighteen and forty-five. The act of March 2d, 1867, provided for the enrolling of negroes by striking out the word "white" from the act of 1792.

A law providing for calling forth the militia in accordance with Clause 15 was passed in 1792.[1] An amended act was passed in 1795,[2] which is still in force. This law authorized the President to call out the militia, for the purposes specified, as he might judge necessary. The militia, when in the service of the United States, were to be subject to the same articles of war as the regular troops, and their time of service could not exceed three months in any one year. In 1862[3] this time was extended to nine months; and it was provided, if the militia had not been enrolled in any State, that the President might make all necessary rules and regulations for doing it.

The Naval Militia.—Since 1890 most of the States on the seaboard and the Great Lakes have organized bodies of naval militia; and Congress has made appropriations, and has authorized the Secretary of the Navy to loan vessels of the navy, for the purpose of affording them drill and instruction. The naval militia forms a reserve force capable of manning auxiliary ships in case of war, especially for coast defense.

National Service of the Militia.—The militia have been called out three times in the history of the country. The first was at the insurrection in the western counties of Pennsylvania, known as the "Whisky Rebellion." A portion of the inhabitants had opposed the execution of the laws imposing duties on domestic spirits, and this opposition was at length carried so far as to render necessary the interposition of force. On the 7th of August, 1794, the President issued a proclamation commanding the insurgents to disperse, and at the same time made requisitions on the governors of New Jersey, Pennsylvania, Maryland, and Virginia, for their quotas of twelve thousand men. The number was afterward increased to

[1] May 2d. [2] February 28th. [3] July 17th.

fifteen thousand. On the 25th of September another proclamation was issued, declaring the necessity of putting the force in motion. By this energetic action of the President the insurrection was quelled without bloodshed.[1] In his next message to Congress the President recommended a revision of the militia law, which was made in 1795.

The militia were again called out in 1812, in the war with Great Britain. In this case it was to "repel invasions."

Though the President was authorized, by act of Congress May 13th, 1846, to employ the militia, as well as the naval and military forces, and to accept the services of volunteers in the prosecution of the war with Mexico, the militia were not called out. The troops furnished by the several States were all volunteers.

In the Civil War.—The third instance in which the militia were called out was during the civil war. The first call was by proclamation of President Lincoln on the 15th day of April, 1861, for "the militia of the several States of the Union to the aggregate number of 75,000, in order to suppress said combinations and to cause the laws to be duly executed." The President, by order dated August 4th, 1862, called for a draft of 300,000 militia to serve for nine months. And again June 15th, 1863, he called for 100,000 militia from the States of Maryland, Pennsylvania, Ohio, and West Virginia, to serve six months. Thus, in the civil war there were three calls for the *militia,* as such, to the number of 475,000 men. This was but a small part of the number in the service, the others being called for as *volunteers,* and under the act to enroll and call out the national forces. The whole number mustered into the service of the United States in the four years from April, 1861, was 2,656,553.[2]

In the war with Spain in 1898 the troops drawn from the several States were not militia but volunteers, though great

[1] Marshall's *Life of Washington*, Vol. V., Chap. viii. Pitkin, Vol. II., Chap. xxiii.

[2] Report of Secretary of War, November, 1866.

numbers of them had been trained in the State militia and were members of militia regiments when they enlisted as volunteers.

Clause 17.—*To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and*

District of Columbia.—The district for the government of which provision is here made, was ceded to the United States by Maryland and Virginia, and accepted by Congress July 16th, 1790. Maryland made the cession of that part lying east of the Potomac in December, 1788, and Virginia the part west of the Potomac in December, 1789. The act of Congress accepting the cession provides "that a district of territory not exceeding ten miles square, to be located on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted, for the permanent seat of government of the United States." The precise location was to be determined under the direction of the President by commissioners to be appointed by him.[1]

Location of the National Capital.—The act further provided that prior to the first Monday of December of that year —1790—all the government offices should be removed to Philadelphia from New York, where Congress was then in session, and should remain there until the first Monday of December, 1800, when they were to be removed to the permanent seat of government. The Continental Congress held

[1] The Continental Congress passed an ordinance December 23, 1785, for laying out on the Delaware River a district not less than two nor more than three miles square.

its sessions in New York from January, 1785, till the Constitution was adopted, and the first Congress under the Constitution held the first two of its three sessions there. Thus, the seat of government was at New York from March 4th, 1789, till the close of the second session of the first Congress, then at Philadelphia for ten years, and has been at Washington since December, 1800.

The original District of Columbia was ten miles square, its boundary lines running N. E., S. E., S. W., and N. W. It was divided into two counties : Washington, east of the Potomac, and Alexandria, west. In July, 1846, the latter was retroceded to Virginia. The present area is about seventy square miles.

Exclusive Power of Congress.—The necessity of exclusive power on the part of Congress at the seat of government is abundantly manifest. Without it, the officers of the government might be interrupted in their duties, the public archives and other property injured, and Congress itself insulted. Once when the Continental Congress was in session at Philadelphia, the building where it was in session was surrounded by some mutinous soldiers, clamoring for their pay. The executive government of that State not giving to Congress adequate protection, that body immediately adjourned to Princeton, New Jersey.

No less necessary is it that the general government should have exclusive control of the places where forts, arsenals, etc., are erected.

The Power not Transferred from the State.—The district in which the seat of government is located was obtained by cession from the State of Maryland. The other places mentioned in the clause have been purchased with the consent of the legislature of the State where they are located. In whichever manner acquired, the districts are under the exclusive control of Congress. They hold to the government the same relation as the Territories do. There is no transfer of political

power from the State to the general government. The latter does not exercise legislation by virtue of any authority derived from the States, but by virtue of the general powers granted by the Constitution.

It was claimed, in a case before the Supreme Court, that Congress, when acting under this clause, must be considered as a mere local legislature, and not as administering the supreme law of the land. "But the Supreme Court held directly the contrary—that the power belonged to 'Congress as the legislature of the Union; for strip them of that character, and they would not possess it. In no other character can it be exercised. . . . Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character, as the legislature of the Union.'" [1]

"The efficiency of the government is all derived from the Constitution, and is equal in all places within its jurisdiction. It is supreme everywhere. It is *inclusive* of all subordinate governments, where there are any, and *exclusive* where there are none. It is permanently *exclusive*, if there can be no other. It is temporarily *exclusive* till a subordinate is instituted. It becomes *exclusive* again, if a subordinate is extinct, whether by right or by wrong; and it remains *exclusive*, when it is so, till a subordinate is rightfully restored." [2]

Direct Tax on the District of Columbia.—As direct taxes are by Article I., Section 2, Clause 3, to be apportioned among the several States according to their respective numbers, it might be thought that the inhabitants of the District of Columbia would be exempt. But the Supreme Court has decided that Congress has the power to levy a direct tax on the District of Columbia and also upon the Territories. Congress is not bound to do it, but the power is possessed, qualified in the same manner as in regard to the States; *i.e.*, the tax must be in proportion to the population. A direct tax was levied upon the States in January, 1815. In February of the same year a tax was levied on the District of Columbia. The direct tax of $20,000,000 a year, according to act of August,

[1] Farrar, page 360. Story, § 1226. [2] Farrar, page 363.

1861, included the District of Columbia and all the Territories then existing.

In the cessions to Congress under this clause, there has generally been a reservation of the right to serve State process, civil and criminal, upon persons found therein. Thus, these places can not be made sanctuaries for fugitives.

Slavery Abolished by Congress.—On the 16th of April, 1862, slavery was abolished in the District of Columbia by act of Congress. At the same session of Congress (the second of the Thirty-seventh Congress) an act was passed declaring that there should be neither slavery nor involuntary servitude in any of the Territories then existing, or which should be formed thereafter. In the District of Columbia provision was made to remunerate loyal owners for the slaves thus set free, not exceeding $300 each in the aggregate. For this purpose the sum of $1,000,000 was appropriated.

Territorial Government.—In 1871 a territorial government was established for the district. It provided for a governor, secretary, council (upper legislative house), board of health, and board of public works, to be appointed by the President and Senate. There was a house of delegates to be elected by the people. The district had also a delegate in Congress. In 1874 the act was repealed, and until a new system could be framed the government was entrusted to three commissioners, to be appointed by the President and Senate.

Present Government.—In 1878 the government of the district was placed under a board of three commissioners; two to be appointed by the President and Senate for three years, and the third, an officer of the Corps of Engineers of the army, to be detailed by the President. These commissioners have general charge of the municipal interests of the district, appointing the police, firemen, school trustees, and other officers. They submit each year to the Secretary of the Treasury a detailed estimate of expenses, which, on his approval, is transmitted to Congress. If Congress approves the estimate, one half the amount is appropriated from the general treas-

ury, and the other half is assessed upon the taxable property of the district.

A system of courts is provided for the District of Columbia, but the lawmaking power is exercised directly by Congress itself.

Clause 18.—*To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.*

Implied Powers of Congress.—This clause, in substance, was in Mr. Pinckney's plan. The Committee of Detail reported it as it is now, and so did the Committee of Revision. There was no opposition or discussion in the Convention, but great opposition was made in the State conventions. Patrick Henry often speaks of it as "the sweeping clause," by which Congress was to overthrow the States. Those opposed to the Constitution assailed it with great vehemence, and endeavored, through the prejudice excited, to prevent the conventions of the States from ratifying the Constitution. Mr. Randolph's plan in relation to the powers of Congress was that "The national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union." This was agreed to in committee of the whole.[1] The clause as to the power of Congress to veto State laws was lost in the Convention, five States voting for it and six against it. Mr. Madison earnestly supported it.

[1] Elliot, V., page 190.

A Constitution Requires Laws.—Writers on constitutional law agree that Congress would have had ample authority to make all laws necessary and proper for carrying into execution the powers vested in the general government by the Constitution, even if this clause had not been inserted. If the Constitution provides for a government, and invests it with powers, it follows as an unavoidable inference that the legislative department of that government can make the laws needful for carrying those powers into execution.

Mr. Madison says,[1] "Few parts of the Constitution have been assailed with more intemperance than this; yet, on a fair investigation of it, as has been elsewhere shown, no part can appear more completely invulnerable. Without the *substance* of this power, the whole Constitution would be a dead letter." He proceeds to show the folly of attempting a positive enumeration of the powers necessary and proper for carrying their other powers into effect; that "the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated, too, not only to the existing state of things, but to all the possible changes which futurity might produce." No less chimerical would it be to enumerate the powers or means not necessary or proper for carrying the general powers into execution.

"Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government by unavoidable implication. No axiom is more clearly established in law, or in reason, that whenever the end is required, the means are authorized. Wherever a general power to do a thing is given, every particular power necessary for doing it is included." Thus Mr. Madison.

Mr. Hamilton uses similar language.[2] "It may be affirmed with perfect confidence that the constitutional operation of the government would be precisely the same if these clauses

[1] Federalist, No. 44. [2] Federalist, No. 33.

were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers."

Chief Justice Marshall says: "A power vested carries with it all those incidental powers which are necessary to its complete and efficient execution." This principle has been repeatedly sanctioned by the Supreme Court, and has been acted on by the general government from 1789 to the present day.

Judge Story says: "It would be almost impracticable, if it were not useless, to enumerate the various instances in which Congress, in the progress of the government, have made use of incidental and implied means to execute its powers. They are almost infinitely varied in their ramifications and details."[1]

Special Implied Powers.—Nothing is plainer than that the Constitution was intended to vest in the general government all the powers which properly belong to such a government, and so it has been understood from the beginning. The language of the Constitution in divers places presupposes that Congress could make laws for which no specific authority is given. Thus, in Art. I., Sec. 9, it is provided that the importation of slaves should not be prohibited till 1808; yet nowhere does the Constitution invest Congress with any authority to prohibit it then.

In the same section it is declared that "The privileges of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." But where has the Constitution conferred upon Congress, or any department of the government, any distinct power to suspend this writ?

So, also, "No bill of attainder or *ex post facto* law shall be passed." Such laws were passed by the British Parliament, and were not unknown in the legislation of the American States. Without this restriction, it was evidently supposed by the framers of the Constitution that Congress might do the same, although there is no clause granting such authority.

The Exercise of Implied Powers by all Parties.—From the beginning of the government under the Constitution, laws

[1] Story, § 1258.

have been enacted that could be justified only on the doctrine of implied powers. And all administrations have recognized the same doctrine. Opposition to certain measures has often been based upon their alleged unconstitutionality; but when the political party from which the opposition came has itself been placed in power, it has not hesitated to deviate quite as far from the strict letter of the Constitution.

Among the acts which are indefensible on the theory of specially enumerated powers may be mentioned the purchase of Louisiana; the embargo act of 1807; grants of lands for railroads and canals; the annexation of Texas; grants of lands for agricultural colleges; the annexation of Hawaii; and the acquisition of Porto Rico and the Philippines. It was contended that the remote location of the Philippines constituted a principle distinguishing this case from the purchase of adjoining territory like Louisiana or even of distant territory on this continent like Alaska; but the Senate, by its ratification of the treaty of Paris (1899) decided that the government has the power to acquire even remote territory. (For the different methods by which territory may be acquired, see pages 184, 185).

The Embargo of 1807; Louisiana Purchase.—"The most remarkable powers," says Judge Story, "which have been exercised by the government, as auxiliary and implied powers, and which, if any, go to the utmost verge of liberal construction, are the laying of an unlimited embargo in 1807, and the purchase of Louisiana in 1803 and its subsequent admission into the Union as a State. These measures were brought forward, and supported, and carried by the known and avowed friends of a strict construction."[1] "The friends of the latter measure were driven to the adoption of the doctrine that the right to acquire territory was incident to national sovereignty; that it was a resulting power, growing out of the aggregate powers confided by the Constitution; that the appropriation

[1] Story, § 1282.

might justly be vindicated upon the ground that it was for the common defense and general welfare." [1]

At the same time, it should never be forgotten that the Constitution has been made by the nation for the guidance of those who, in the three great departments, are charged with the duty of carrying on the government. Those powers only may be rightfully exercised which are expressly or by implication found in the Constitution.

Sec. 9, Clause 1.—*The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

Slave Trade.—The "persons" here mentioned were slaves. The use of the two words *migration* and *importation* will be noticed; the one properly applicable to persons, and the other to property. The clause permitted the slave trade till 1808. As reported by the Committee of Detail, the provision was that such importation should not be prohibited; there was no limitation of time. It was provided also in that report that no tax or duty should be levied. The tax of ten dollars which the Convention finally decided upon was in fact never imposed by Congress. At the expiration of the twenty years the further importation of slaves was prohibited by an act passed March 2d, 1807, to take effect January 1st, 1808.

When the Constitution was formed, no nation had abolished the slave trade.[2] Yet of the thirteen American States, all but three had prohibited the importation of slaves. These three were North Carolina, South Carolina, and Georgia; and they insisted upon a provision in the Constitution for the admission of slaves, at least for a limited period. Hence the clause as it appears.

[1] Story, § 1286. [2] Great Britain abolished it March 25th, 1807. Kent, I., 195.

Action of Congress as to Slavery.—The following is a summary of the action of our government touching slavery and the slave trade :

In 1787[1] the Continental Congress passed an "Ordinance for the government of the Territory of the United States north-west of the River Ohio," which provided that in the Territory there should "be neither slavery nor involuntary servitude . . . otherwise than in the punishment of crimes."

The slave trade to foreign countries was prohibited in 1794.[2]

The importation of slaves was prohibited in 1807,[3] the law to take effect January 1st, 1808.

In 1820[4] the slave trade was declared to be piracy, to be punished with death.

Slavery was abolished in the District of Columbia by act of Congress in 1862,[5] and in the Territories the same year.[6]

The President's first proclamation as to emancipation of slaves in the South was issued September 22d, 1862. The second proclamation, emancipating them, is dated January 1st, 1863. The coastwise slave trade was forever prohibited by act of July 2d, 1864.

The Thirteenth Amendment to the Constitution, abolishing slavery throughout the United States and all places subject to its jurisdiction, was proposed to the legislatures of the States by Congress, February 1st, 1865, and was ratified December 18th, 1865.

Clause 2.—*The privilege of the writ of* habeas corpus *shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.*

The Writ of Habeas Corpus.—A writ is a legal instrument or writing issued by a competent authority, commanding the

[1] July 13th. [2] March 22d. [3] March 2d.
[4] May 15th. [5] April 16th. [6] June 19th.

performance or nonperformance of some act by the person to whom it is directed. These writs were formerly written in Latin, and they are often designated by some important Latin words contained in them. The words *habeas corpus* mean "you may have the body;" and the writ is issued by the judge having competent authority, commanding some officer—a sheriff or marshal—to bring the person held in confinement before the judge, that he may inquire into the cause of his imprisonment. The officer, after trying to execute the writ, writes upon the back of the instrument a statement of his performance of the directions contained in it, in case he is able to obey it, or the reasons for his failure if he has not been able to carry out the directions. He then returns the writ to the court which issued it. This statement is the *return*.

The object of the writ is to prevent any illegal imprisonment or detention, and it is regarded as one of the great bulwarks of personal liberty. The writ may be granted upon the application of the person himself who is restrained of his liberty, or on the application of another person in his behalf. If, upon judicial inquiry, he is found to be imprisoned or confined for sufficient cause, he is still held in confinement; but if it appears that he has been arrested illegally, he is set at liberty.

Such writs are issued not only to release from confinement those who are unlawfully imprisoned, but to enable parents to get control of their children when held in custody by others, and to set at liberty sane persons who may be confined under pretense of insanity.

The application must be accompanied with an affidavit that the detention is contrary to law, and setting forth the facts in the case. "Though the writ of *habeas corpus* is a writ of right, it is not a writ of course; and the judge is not bound to grant it except for cause shown." Sometimes from the application itself it may be evident to the judge that the

arrest was legal, in which case the writ of *habeas corpus* will not be issued.

By Whom Suspended.—The Constitution does not determine by whom the privilege of the writ of *habeas corpus* may be suspended, whether by Congress, or the President, or both. The more common opinion has been that the power belongs to Congress and not to the President. In 1807 a bill for the suspension of the writ was lost in the House of Representatives after having passed the Senate.[1] The first act passed by Congress to suspend the writ was in March, 1863. It had, however, been previously suspended by President Lincoln (April 27th, 1861) in an order to Lieutenant General Scott. This had reference to the military line between Philadelphia and Washington. This action of the President was in accordance with the opinion of the Attorney General, who is his legal adviser. Attorney General Bates says: "If by the phrase, the suspension of the writ of *habeas corpus*, we must understand a repeal of all power to issue the writ, then I freely admit that none but Congress can do it. But if we are at liberty to understand the phrase to mean that in case of a great and dangerous rebellion like the present, the public safety requires the arrest and confinement of persons implicated in that rebellion, I as freely declare the opinion that the President has lawful power to suspend the privilege of persons arrested under such circumstances, for he is specially charged by the Constitution with the 'public safety,' and he is the sole judge of the emergency which requires his prompt action."

Most of those who believe that the Constitution gives to Congress the power to suspend the writ, would admit that in cases of exigency the President might exercise the power without the authority of Congress. Thus Mr. Mulford says: "Since the legislature can not always act with the immediate energy which may be demanded, and does not act continuously,

[1] This was on the occasion of the Burr conspiracy in Mr. Jefferson's administration. The vote in the House was 19 for and 113 against.

in its supreme necessity, in the actual or in the imminent peril of the nation, it becomes not only the office but the imperative duty of the executive to assert it." [1]

Action of Congress in 1863.—In the act of Congress passed March 3d, 1863, the President was authorized to suspend the privilege of the writ in any case throughout the United States, whenever in his judgment the public safety should require it. The same act contained a clause of indemnity to the President and those acting under his orders for any arrest or imprisonment during the existence of the rebellion. The suspension of the writ of *habeas corpus* during the civil war was, therefore, by the authority of both the legislative and executive departments of the government.

The suspension of the writ does not make it unlawful for the judge to issue the writ; but the writ having been issued, it is a sufficient return, or answer, to it to say that the privilege of the writ has been suspended.

Action of Military Officers.—Though the writ of *habeas corpus* had never been suspended either by the Congress or the President, until the civil war, it appears to have been suspended by military officers. "During the administration of President Washington, in the Pennsylvania 'Whisky Insurrection' of 1794 and 1795, the military authorities engaged in suppressing it disregarded the writs which were issued by the courts for the release of the prisoners who had been captured as insurgents. General Wilkinson, under the authority of President Jefferson, during the Burr Conspiracy of 1806, suspended the privilege of this writ, as against the Superior Court of New Orleans. General Jackson assumed the right to refuse obedience to the writ of *habeas corpus* first in New Orleans, in 1814, as against the authority of Judge Hall, when the British army was approaching that city; and afterward, in Florida, as against the authority of Judge Fromentin." [2]

Clause 3.—*No bill of attainder or* ex post facto *law shall be passed.*

[1] The *Nation*, page 188.

[2] Halleck's *International Law and Laws of War*, page 379, quoted by Hon. A. F. Perry.

A Bill of Attainder is a legislative act inflicting death or other punishment without a judicial trial. If the punishment is less than death, the act is now called in Great Britain a bill of pains and penalties. The legislature, in passing such a bill, assumes the functions of the judicial department of the government; it pronounces sentences and inflicts punishments not determined by previous law; and it ordinarily gives the person accused no opportunity of defending himself. "Such was the bill of attainder in England, and such was it in this country at the time of the adoption of the Constitution. By that the whole subject was abolished and prohibited entirely and forever."[1]

An Ex Post Facto Law is one which makes an act criminal which was not criminal when committed. So a law would be *ex post facto* that inflicts a greater punishment than the law imposed when the crime was committed. The phrase applies only to penal and criminal laws, and not to civil proceedings which affect private interests retrospectively. A law abolishing imprisonment for debt would not be an *ex post facto* law, though it should apply to past contracts; nor would a law rectifying some error, as making deeds of land valid which were void through some defect.

In the case, *ex parte* Garland, the majority of the Supreme Court held that the law of January 24th, 1865, which required a prescribed oath of every attorney before he could practice at the bar of a United States court, was in violation of this clause, and therefore unconstitutional. Judges Chase, Davis, Miller, and Swayne dissented; in their judgment the act of Congress referred to was neither a bill of attainder nor an *ex post facto* law.[2]

Clause 4.—*No capitation, or other direct, tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.*

Capitation Tax.—A capitation tax is a poll tax. The tax is levied not according to property but by the head. By

[1] Farrar, page 420. [2] 4 Wallace, 334.

Article I., Section 2, the Constitution provided that direct taxes should be divided among the States according to the population; and in estimating the population, only three fifths of the slaves should be counted. This clause would therefore exempt two fifths of the slaves from every poll tax levied by the general government. It was to secure this exemption, and to prevent the levying of any special tax on slaves, that the clause was inserted. No capitation tax has ever been levied by the United States. The constitution of Ohio forbids it for State or county purposes. The direct tax of 1798 was assessed upon dwelling houses, lands, and slaves—upon each slave fifty cents. This was not a capitation tax, though in the States where slaves were held, a part of the tax was levied upon the capitation principle, so far as the slaves were concerned.

Direct Tax in this clause means a tax on land or slaves or a capitation tax. This is what the term meant at the time of the adoption of the Constitution, and this definition is still given to it by the courts.

Clause 5.—*No tax or duty shall be laid on articles exported from any State.*

Export Duties.—This clause was reported by the Committee of Detail in connection with the clause relating to the importation of slaves. There was strong opposition in the Convention to giving up the right to tax exports. Several of the most influential members, Washington, Madison, Wilson, Morris, and others, were in favor of allowing Congress to tax exports as well as imports, regarding the power as essential to a general government.

The constitution of the Confederate States contained no such clause of prohibition, and heavy export duties were levied by them upon cotton.

Clause 6.—*No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of*

another: nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

Entering a Port; Clearing.—To "enter" a port is to report the ship with the cargo to the proper officer, and obtain permission to land the cargo. To "clear" is to obtain from the proper authorities the necessary papers for sailing from the port. While we were colonies under Great Britain, no American ship could trade with any port in Europe unless it first entered and cleared from a British port. But now a vessel can take her cargo from New York, or Boston, or New Orleans, directly to any European port. So a vessel can go from any one American port to any other. This latter constitutes the coasting trade, which is greater in amount than the foreign trade.

A former clause (Sec. 8, Clause 1) requires all duties, imposts, and excises to be uniform throughout the United States. This clause, providing that no preference should be given to one State over another in any commercial regulation, is of the same character. The different States were to be treated with absolute impartiality and equal justice by the general government.

Clause 7.—*No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.*

Appropriations.—The propriety of this clause is obvious. It is a limitation on the executive department, and not on the legislative. The appropriations are voted annually, the fiscal year ending on the 30th of June. These appropriations are made for the different departments of the government with much detail, and the duties devolving on the Committee on Appropriations are very arduous and responsible. The acts making appropriations for the year ending June 30th, 1901,

for instance, fill more than two hundred and thirty pages of the United States Statutes at Large. To illustrate the minuteness of these appropriations, there are thirty different specifications under the head of "Library of Congress."

Finance Report.—The account of the receipts and expenditures is annually reported to Congress by the Secretary of the Treasury. These reports form an important part of the executive documents of the government.

Clause 8.—*No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.*

Titles of Nobility.—"Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner stone of republican government; for so long as they are excluded there can never be serious danger that the government will be any other than that of the people."[1]

Presents to Officers.—The second part of this clause is to prevent any officer of the government from being influenced by a gift of any kind from any foreign prince or state. History shows abundant instances of the bribing by one government of the officials of another. When presents have been sent to officers of our government by a foreign power, they have become the property of the government, or Congress has authorized those to whom they were sent to receive them.

This clause applies to military and naval officers as well as to civil officers.

At the second session of the Eleventh Congress an amendment to the Constitution was proposed, two thirds of both houses concurring, extending this prohibition to private citi-

[1] Hamilton, Federalist, No. 84.

zens.[1] But this proposed amendment has never been ratified by the requisite number of States. (See page 285.)

Sec. 10, Clause 1.—*No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder,* ex post facto *law, or law impairing the obligation of contracts, or grant any title of nobility.*

Prohibitions on the States.—This section contains prohibitions and restrictions on the powers of the States. The Constitution is the expression of the will of the nation; that is, of the people of the whole country. In the Constitution, the nation has declared that the general government shall exercise all the powers of national sovereignty, and that the States shall have authority in matters of local and municipal government. Powers pertaining to national sovereignty are expressly denied to the States in this tenth section. Nearly all these prohibitions are found also in the Articles of Confederation, and some of them are expressed there in terms stronger than in the Constitution.

Sovereignty.—Though we often hear the States spoken of as sovereign, they have never been so in fact. They were colonies till the 4th of July, 1776, and then the United Colonies became a nation, and each colony became a State. From that day to this the individual States have exercised none of the powers of sovereignty. It is not unfrequently said that the States parted with their sovereignty when the Constitution was formed, implying that till then they possessed sovereign powers. But they could not part with what they never possessed. The question is one of fact, and not one of theory. The Continental Congress exercised the powers of national sovereignty from the day of the Declaration of Independence

[1] U. S. Statutes at Large, II., page 613.

till the present Constitution went into operation. In the language of Mr. Jay, afterward Chief Justice of the Supreme Court, "To all general purposes, we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges, and protection. As a nation, we have made peace and war; as a nation, we have vanquished our common enemies; as a nation, we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states." [1]

Treaties, etc.—The Articles of Confederation forbade the States to "send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state," without the consent of the United States. In the Constitution the prohibition is absolute. Were each State to have the power to form *alliances* with foreign nations, it would be impossible to preserve the peace and harmony of the several parts of the republic. The Union would soon be dissolved, and the nation split into fragments. Could the States grant *letters of marque*, it would be in the power of any one to involve the rest in war. All these powers, being incident to national sovereignty, are thus wisely and necessarily prohibited to the States. The other powers prohibited to the States by this clause, however, might be exercised by inferior governments.

Coining Money.—The Articles of Confederation allowed the States to coin money, but gave to Congress the exclusive right to regulate the alloy and value of the coin. The power of the States in regard to money was thus a qualified power. But the provision of the Constitution, prohibiting the States absolutely from coining money, is a manifest improvement on the previous system.

Bills of Credit.—The States are also prohibited from emitting bills of credit. "To constitute a bill of credit, within the Constitution, it must be issued by a State, involve the

[1] Federalist, No. 2.

faith of the State, and be designed to circulate as money, on the credit of the State, in the ordinary uses of business."[1] Such bills may or may not bear interest; they may or may not be made a legal tender. Neither of these circumstances would affect them as bills of credit. The State of Missouri issued loan certificates, bearing interest and redeemable by the State, which were made receivable for taxes and debts, and by public officers in payment of their salaries. But the Supreme Court decided that they were bills of credit, and therefore unconstitutional.[2] A State may borrow money and issue bonds therefor; such bonds are not bills of credit. The paper currency issued by the Continental Congress, and by the several States prior to the adoption of the Constitution, was known as bills of credit.

The evils of the paper money issued by the States after the war of the Revolution are strikingly depicted by Mr. Madison. "The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man; on the necessary confidence in the public councils; on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure, which must long remain unsatisfied; or rather, an accumulation of guilt, which can be expiated no otherwise than by a voluntary sacrifice on the altar of justice, of the power which has been the instrument of it."[3]

Legal Tender.—The States are also forbidden to make anything but gold and silver coin a legal tender in payment of debts. The Constitution virtually places the control of the whole subject of money and the currency with the general government. The States have, indeed, established banks, and authorized them to issue notes for circulation, but it has been by sufferance, and not by Constitutional authority. The general government, in the establishment of national banks, has assumed the exercise of the power which it was manifestly the intention of the Constitution it should possess.[4]

[1] 11 Peters, 257.
[2] 4 Peters, 410.
[3] Federalist, No. 44.
[4] See pages 113, 116, 117.

The States as well as the general government are prohibited from passing any bills of attainder or *ex post facto* laws. There would be no propriety in allowing such a power to the former if prohibited to the latter. Very wisely such laws are entirely prohibited.

Obligation of Contracts.—No State can pass laws impairing the obligation of contracts. The obligation here spoken of is legal, not moral. "The spirit of the provision is this: A contract which is legally binding upon the parties at the time and place it is entered into by them, shall remain so, any law of the States to the contrary notwithstanding." [1]

Under this clause the States are clearly prohibited from passing bankrupt laws impairing the obligation of contracts made antecedently to their passage. The Supreme Court has decided, however, that the States may pass laws operating upon future contracts between their own citizens.

State constitutions as well as statutes are within the prohibitions of this clause.

Whether Congress can pass laws impairing the obligation of contracts, except as provided in the Constitution, as in the case of bankrupt laws, has been questioned. In a case before the Supreme Court, involving the question whether greenbacks could be used to pay debts contracted before the passage of the law making them legal tender, Chief Justice Chase maintained that Congress could not pass a law impairing the obligation of contracts without a constitutional authorization. Also, it is clear that contracts are property, and if Congress were to attempt to impair their obligation it might be maintained that this would be taking the property of the obligee without due process of law. Such deprivation of property is forbidden by the Fifth Amendment to the Constitution.

Legislative Grants.—The term contract is made to include *grants,* which are contracts that have been executed. A grant made by a State legislature is irrevocable. Whenever a law is in its own nature a contract, and absolute rights have become vested under it, a repeal of that law can not divest those rights or annihilate or impair the title so acquired.[2]

[1] Tiffany, page 217. [2] Story, § 1391.

Charters.—If a charter of a bank, which has been incorporated by a State, should prescribe the manner in which the bank should be taxed, the State could not subsequently alter the mode of taxation, not even if meanwhile the State should have adopted a new constitution prescribing the manner in which banks should be taxed.

So a charter of a college is a contract which the legislature of a State can not annul or impair. The State of New Hampshire attempted to change the charter of Dartmouth College, transferring the government of the institution from the old charter trustees to new trustees appointed under the legislative act. But the action of the legislature was declared by the Supreme Court to be unconstitutional.

Clause 2.—*No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.*

Import Duties.—The authority to levy duties on goods imported belongs properly to the general government. The exercise of this power by the several States, prior to the adoption of the Constitution, was one of the chief causes of the overthrow of the Articles of Confederation. The whole power is now vested in Congress, and the States are by this clause prohibited from laying duties except with the consent of Congress, and the revenue obtained in such case must be paid into the treasury of the United States.

Inspection.—The object of inspection is to secure a certain standard of excellence in commodities offered for sale; so that purchasers may not be imposed upon. An inspector is appointed under State law, whose duty it is to examine flour, pork, etc., and certify as to its quality. If it comes up to the required standard, he stamps or brands the cask or

package accordingly. Sometimes the inspector is paid by the city which appoints him, and sometimes his compensation is obtained by means of fees. To insure that no State shall levy any duty or impost under the form of inspection fees, the net proceeds of such fees are required to be paid into the United States treasury.

A State can not lay duties on imports or exports indirectly. Maryland once required all importers of foreign goods, and those selling the same in the original package, to take a license from the State, for which a fee of fifty dollars was to be paid. The Supreme Court decided that the law requiring this was unconstitutional, because it virtually levied a duty on the articles imported.

Taxation by States.—The Constitution in no other clause refers to taxation of any kind by State authority. But it everywhere recognizes the existence of the States as governments, and thus presupposes their power to levy taxes. For the support of its local government a State may tax its citizens, but it may not levy duties on imports, save with the consent of Congress, or merely for inspection purposes. And the Supreme Court has decided that a State can not levy a tax that shall in any way obstruct the legislation of the general government. Thus a State can not tax United States bonds or treasury notes, or a bank chartered by the general government, except as provision is made for such State taxation by Congress; while the United States may levy a tax upon State bonds, or banks chartered by the States. "When Congress tax the chartered institutions of the States they tax their own constituents; and such taxes must be uniform. But when a State taxes an institution created by Congress it taxes an instrument of a superior and independent sovereignty, not represented in the State legislature."[1]

Clause 3.—*No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time*

[1] Story, § 1053.

of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Tonnage.—Duties on tonnage are duties on ships. A ship that can carry five hundred tons of freight is said to be of five hundred tons burden. Where duties are levied upon ships, it is in proportion to their capacity, or the amount of freight they can carry. If the States are prohibited from raising a revenue from goods imported, they should also be prohibited from taxing the ships in which the goods are brought.

The Other Prohibitions in this clause refer to matters of national sovereignty. The whole control of questions relating to peace and war, treaties, alliances, etc., is placed in the general government; and nothing can be done by the States in these matters except under its direction. It has been seen that there are implied as well as express prohibitions on the powers of the States. Thus no State can tax the bonds issued by the United States. And State statutes of limitations and State insolvent laws have no operation upon the rights or the contracts of the United States.

ARTICLE II.

The Executive Department.

Sec. 1, Clause 1.—*The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:*

The Executive.—From the Declaration of Independence to the time when the Constitution went into operation, there had been no executive department. In the Convention there

was no difference of opinion as to the propriety and necessity of establishing such a department distinct from the legislative. There was not the same unanimity as to the other questions, viz., whether the power should be vested in a single person, what should be the term of office, how the executive should be chosen, and whether the same person or persons should be eligible to the office a second time. The vote in the committee of the whole was "That a national executive be instituted, to consist of a single person, to be chosen by the national legislature (Congress) for the term of seven years." Subsequently the Committee of Detail reported the same clause, with the addition that he should not be eligible a second time. Repeated efforts were made in the Convention by the delegates from Pennsylvania to change the mode of election, so that the executive might be elected by the people, or by electors, instead of by Congress; but only two States voted for the change. The clause was then referred to the committee of one from each State, appointed to report on the unfinished parts of the Constitution, who reported it nearly as it was finally adopted.

A Single Executive.—There is no difference of opinion at the present time in regard to the importance of unity in the executive. All are agreed that this power must be lodged in the hands of one man. To divide responsibility is to introduce feebleness. Every government should be administered with firmness and vigor. When laws are enacted they must be executed. The maxim that that government is best which governs least, is not true. That government is best which is so promptly and wisely administered that there will be little disposition to violate or evade the law. Republics are often affirmed to be feeble of necessity; but there is no inconsistency between a republican government and great firmness and energy of administration.

The Executive Power in the President.—The executive power "shall be vested," that is, *is* vested. The President

duly elected has the power by the Constitution, without any law conferring it on him. The power is vested in the President alone; not in him and his Cabinet. The executive power is not defined in the Constitution. Whatever it is, it is vested in the President. The Constitution authorizes him to do some things which do not necessarily belong to him in the character of executive. Thus he has a qualified negative on the legislation of Congress; with the advice and consent of the Senate he can make treaties. But whatever else may belong to the executive department, this does, that the President shall see that the laws are executed.

President Reëligible.—We have seen that the Convention that framed the Constitution decided in committee of the whole that the term of office of the President should be seven years, and that he could not hold the office a second term. Both these provisions were subsequently changed; the term of office being made four years, and the restriction to a single term being stricken out, so that the people may elect the same man to the presidency as many times as they please.

Presidents Reëlected.—Nine Presidents have been reëlected as their own successors; viz., Washington, Jefferson, Madison, Monroe, Jackson, Lincoln, Grant, McKinley, and Roosevelt; and one, ex-President Cleveland, was elected for a second term after an intervening term. Five Presidents have been nominated as their own successors, but not elected; viz., John Adams, John Quincy Adams, Van Buren, Cleveland, and Harrison; and ex-President Fillmore was the candidate of a third party after an intervening term. No President has been nominated for a third term, though Cleveland was a second time nominated for a second term, having failed of reëlection as his own successor.

Arguments for a Single Term.—The question of one presidential term has been much agitated. It is doubtful whether the Convention acted wisely in reducing the length of the term from seven years to four, and in striking out the clause

forbidding a reëlection. "The election of a supreme executive magistrate for a whole nation affects so many interests, addresses itself so strongly to popular passions, and holds out such powerful temptations to ambition, that it necessarily becomes a strong trial to public virtue, and even hazardous to the public tranquillity. . . . This is the question that is eventually to test the goodness, and try the strength of the Constitution."[1]

Besides the excitement attending the election of the executive head of a great nation, which is so great that Mr. Paley condemns all elective monarchies, and thinks nothing is gained by a popular election worth the dissensions, tumults, and interruptions of regular industry with which it is inseparably attended, there is the unfavorable influence on the President himself. It is natural that he should desire the approbation of the people as manifested by a reëlection. But the danger is that this desire may tempt him to shape his administration so as to secure a renomination.

The Confederate constitution provided that the term of President and Vice President should be six years, and that the President should not be reëligible.

Clause 2.—*Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.*

Modes of Choosing Electors.—The President and Vice President are to be chosen by electors, but the manner in which the electors are to be appointed is left to the legislature of each State. "The electors were at first chosen in four different modes, viz., by joint ballot of the State legislature, by a concurrent vote of the two branches of the legislature, by the people of the State voting by general ticket, and by the people voting in districts. This last mode was evidently that which gave the fairest expression to public opinion by

[1] Kent 1, page 273.

approaching nearest to a direct vote. But those States which adopted it were placed at the disadvantage of being exposed to a division of their strength and neutralization of their vote; while the electors chosen by any one of the other methods voted in a body on one side or the other, thus making the voice of the State decisively felt. This consideration induced the leading States of Massachusetts and Virginia, which originally adopted the district system, to abandon it in 1800." [1]

In 1828 more than one third of the States chose their electors by districts. In South Carolina the choice was made by the legislature till 1868. By 1872 the mode by general ticket had been adopted in every State. Choice by districts was adopted in Michigan in 1891, but abandoned by a repeal of the act in 1893.

Number of Electors.—The Constitution determines the number of electors. Whatever may have been the mode of choosing them, whether by the people or the legislature, it has been the practice to take one from each Congressional district, and two from the State at large. No qualification is required for an elector except the negative one, that he shall not hold an office of profit or trust under the United States.

Twelfth Amendment.—The third clause of the original Constitution has been abrogated by an amendment which was proposed by Congress in December, 1803, and, having been ratified by three fourths of the legislatures of the States, became valid as a part of the Constitution September 25th, 1804. The original clause will be found in the note.[2] The

[1] Lanman's *Dictionary of Congress*, page 427.

[2] Clause 3.—The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the

Amendment substituted for it is Article XII. of the Amendments, and is as follows:

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate;—The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House

whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Original Clause.—According to the original clause the electors were to vote for two persons without designating either as President or Vice President. The one who received the greatest number of votes, provided that number was a majority of the whole number of electors, was to be the President, and the one who received the next greatest number was to be the Vice President. If two had the same number, being a majority, the House of Representatives was to choose one of them for President. If no one had a majority, the House of Representatives was to choose a President from the five highest.

The Difference.—The chief points of difference between the methods are these two: according to the amendment each elector votes for President as such, and also for Vice President; and if the election goes to the House of Representatives, the choice is from the *three* highest, instead of from *five*, as was provided in the original article.

Presidential Elections.—At the first election General Washington was voted for by each of the electors, 69 in number.

Mr. John Adams, who became Vice President, as having the next highest number of votes, received only 34; the remaining 35 votes having been divided among ten candidates.

At the second election, in 1792, General Washington was again elected unanimously, receiving 132 votes.[1] Mr. Adams was reëlected Vice President, receiving 77 votes, a majority of the other 132 votes.

At the third election, in 1796, Mr. Adams was elected President, receiving votes from a small majority of the electors; and Mr. Thomas Jefferson became Vice President, since he had the next highest number of votes, though he was not the choice of a majority of the electors. Adams and Jefferson were of different political parties.

Fourth Election Goes to the House.—At the fourth election, in 1800, Messrs. Jefferson and Burr, who belonged to the same political party, had the same number of electoral votes, each being voted for by a majority of the electors; and thus the choice devolved upon the House of Representatives. There were sixteen States, of which eight voted for Jefferson, six for Burr, and two were divided. They continued to vote thus for thirty-five ballotings, occupying seven days, nominally without adjournment. On the thirty-sixth ballot the two divided States voted for Jefferson, and so he became President, and Aaron Burr Vice President. It was this difficulty that led to the amendment of the Constitution, which amendment was ratified before the fifth election, in 1804.

House Elects in 1824.—The election of President has devolved on the House of Representatives in one other case. In the year 1824 Andrew Jackson received 99 electoral votes, John Quincy Adams 84, William H. Crawford 41, and Henry Clay 37. General Jackson lacked 32 of a majority, and the choice devolved on the House of Representatives. As the choice must be from the three highest, Mr. Clay could

[1] James Monroe, in 1820, received all but one of the electoral votes for President.

not be voted for. Of the twenty-four States, thirteen voted for Mr. Adams, seven for General Jackson, and four for Mr. Crawford. John C. Calhoun, the leading candidate for Vice President, was elected by the electors, having received 182 votes. In this case the President and Vice President belonged to different political parties.

Vice President Chosen by Senate.—Once only has the choice of Vice President devolved on the Senate. In the fall of 1836 Martin Van Buren received 170 votes out of 294 for President, and was elected; Richard M. Johnson failed of an election to the vice presidency by one vote, having received 147. He was chosen by the Senate.

Electoral Voting a Form.—Practically the people vote for President and Vice President, and it is known who is to be the next President long before the electoral colleges convene. Thus the voting by the electors has become a mere form, though it was not so intended. Various plans have been suggested in respect to the mode of electing the President, but Congress has never yet proposed an amendment on this subject since the Constitution was altered in 1804. By the present mode a candidate may have a large majority of the electoral votes, and yet be in a decided minority so far as the popular vote is concerned.

Advantages of the Amendment.—By the original article a Vice President could not be chosen till the President had been chosen; a failure in the choice for the first office would involve therefore a failure in the second also. The amendment avoids this difficulty, by providing that the Senate may choose a Vice President if no one has been chosen by the electoral vote. If the House of Representatives should fail to choose a President by the 4th of March, the Vice President chosen by the electors or by the Senate would act as President. The amendment also makes it certain that a candidate for the presidency shall not be defeated for that office by a candidate for the vice presidency; such an event would have been pos-

sible, under the original Constitution, as the result of scattering votes or the intrigues of a minority.

Counting the Electoral Votes.—It is usual for the two Houses to meet in the House of Representatives, when the votes are opened by the president of the Senate, and handed to tellers, who count the votes and announce the result.

Disputed Returns.—In some cases objection has been made to the electoral returns from a State on the ground of illegality, or a State has sent two conflicting sets of votes. In every case but one the majority for one of the candidates has been so large that the result would not have been affected on which side soever the disputed votes were counted. In 1876 double returns were received from a number of States, and it was known that the election depended on these votes. Unfortunately the Constitution does not point out the method of deciding such questions. As the Senate was Republican and the House Democratic the problem had in it elements of danger. The difficulty was met in this way.

In January, 1877, an act was passed, applicable to that election only, that no vote of a State should be rejected except by concurrent vote of both Houses, and that all cases of two or more sets of votes from the same State should be referred to a commission of fifteen, composed equally of senators, representatives, and justices of the Supreme Court. The cases referred were those of Florida, Oregon, South Carolina, and Louisiana. These were all decided in favor of the Republicans by a vote of eight to seven, and Rutherford B. Hayes was elected by a vote of 185, Samuel J. Tilden having 184.

Act of 1887.—An act was passed in February, 1887, "to provide for and regulate the counting of the votes for President and Vice President, and the decision of questions arising thereon." It provides that the determination by the States, under State law, of all contests as to the appointment of electors, shall be final. In case, however, of double returns

being made from a State, or if objections are made to the certificate of the vote of a State, the law prescribes the action of Congress. The method of procedure in counting the votes is made more explicit than in previous legislation.

The first sentence of this amendment, and of the original clause, does not forbid the election of both the President and the Vice President from the same State If they were so selected, however, the electors of that State could not vote for both of them. This provision, as well as other considerations of expediency, would put at a disadvantage any political party which should nominate both its candidates from the same State; and no party has ever done so

Clause 3.—*The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.*

First Election.—After the Constitution had been ratified by the requisite number of States, the Continental Congress appointed the first Wednesday in January, in 1789, as the day for choosing electors, the first Wednesday in February for the electors to assemble and vote for President, and the first Wednesday of March as the day on which to commence proceedings under the new Constitution.[1] The first Wednesday of March was the 4th day of the month, in the year 1789.

Later Elections.—In 1792 an act was passed requiring that the electors be appointed within thirty-four days preceding the first Wednesday in December; that the electors should meet and give their votes on the first Wednesday in December; that the votes should be counted on the second Wednesday of February; and that the Presidential term of four years should commence on the 4th day of March. The last two of these provisions remain in force. Since 1845 the electors have been chosen on the Tuesday next after the first

[1] Journal Cont. Cong., XIII., page 105.

Monday in November; and by the act of February, 1887, the electors vote on the second Monday of January.

Each State may provide for filling any vacancy which may occur in its college of electors. By the amendment to the Constitution made in 1804, if the House of Representatives should not elect a President by the 4th of March, the Vice President becomes President. The 4th of March is thus virtually made by the Constitution, as well as by the statute, the day when a new presidential term begins.

The electors in each State make and sign three certificates of all the votes given by them, one of which is forwarded by special messenger to the president of the Senate at Washington, one is sent to him by mail, and one is delivered to the judge of that district in which the electors meet.

Clause 4.—*No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.*

Qualifications of the President.—At the time of framing the Constitution, a number of men of foreign birth were among the most prominent in the nation, some of them being members of the Convention. The exception in favor of those who were citizens at the time the Constitution was adopted was a mark of respect to them.

A residence abroad on official duty would not incapacitate one for holding the office of President. Mr. Buchanan had been minister to England just prior to his election to the presidency in 1856.

Clause 5.—*In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide*

for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The Vice President.—Until near the close of the Convention that framed the Constitution, nothing had been said of a Vice President. The Senate had been authorized to choose its own presiding officer, and in case of the death or removal of the President of the United States, the president of the Senate was to become President. The Convention had decided that the President should be elected by Congress; but there was difficulty in arranging the details, and the committee of one from each State finally reported a new plan, providing for an election of President by means of electors appointed in the several States. This plan seemed to render desirable the election of a Vice President, and thus the Constitution made provision for such an officer.

We have seen that, according to the amendment adopted in 1804, the Senate may choose a Vice President immediately, if there has been no election by the electors. If, therefore, by possibility the House of Representatives, when the election devolves on them, should fail to elect a President by the 4th of March, the Vice President would become President.

Presidential Succession by Law of 1792.—Congress provided by law, in 1792,[1] that in case of the removal, death, resignation, or inability of both President and Vice President the president *pro tempore* of the Senate, and in case there were no such president, the speaker of the House of Representatives, should act as President until the disability were removed or a President were elected. If the Vice President becomes President, he holds the office during the remainder

[1] March 1st.

of the term for which the President was elected; but the president *pro tempore* of the Senate, or the speaker of the House, would act only till a new President could be elected.

The Law of 1886.—In 1886[1] a law was passed substituting for the president *pro tempore* of the Senate and the speaker of the House the members of the Cabinet, in the following order: the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior. But no member of the Cabinet can act as President unless he has the constitutional qualifications for the presidency. If Congress be not in session, or would not by law meet within twenty days, a special session is to be called. As by the law of 1792, so under this law the officer acting as President would act only till a new President could be elected.

Five Vacancies.—A vacancy in the office of President has occurred five times, and in each instance by the death of that officer. General William Henry Harrison died April 4th, 1841, just one month after his inauguration, and was succeeded by John Tyler, April 6th. General Zachary Taylor died July 9th, 1850, and was succeeded by Millard Fillmore, July 10th. Abraham Lincoln was assassinated on the night of April 14th, 1865, and was succeeded by Andrew Johnson, April 15th. James Abram Garfield died September 19th, 1881, from a wound by an assassin, and Vice-President Chester A. Arthur became President. William McKinley died September 14th, 1901, from a wound by an assassin, and was succeeded the same day by Vice-President Theodore Roosevelt. The case of the removal of both President and Vice-President has never occurred.

Clause 6.—*The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall*

[1] January 19th.

have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

The Salary of the President was made twenty-five thousand dollars a year, and that of the Vice President five thousand dollars, by act of Congress September 24th, 1789, and again February 18th, 1793. The President's salary was raised to fifty thousand dollars in 1873, and to seventy-five thousand in 1909. The salary of the Vice President was made eight thousand dollars in 1853, ten thousand March 3d, 1873, eight thousand January 20th, 1874, and twelve thousand February 26th, 1907. A furnished house is provided for the President. The salaries are paid monthly.

Clause 7.—*Before he enter on the execution of his office, he shall take the following oath or affirmation:*—"*I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.*"

The Oath of Office.—The oath is administered to the President by the Chief Justice of the Supreme Court, in connection with the inauguration ceremonies, which are held at noon on the 4th of March.

After the death of President Harrison, Mr. Tyler took the oath prescribed in the Constitution, although he said that he deemed himself qualified to perform the duties and exercise the powers and office of President without any other oath than that which he took as Vice President. The same was done by Messrs. Fillmore, Johnson, Arthur, and Roosevelt. It is said that the cabinet of President Harrison proposed that Mr. Tyler be styled "Acting President," but the proposition was declined. The Constitution says the powers and duties of the office "shall devolve on the Vice President" in case of the removal of the President, but that Congress shall declare what officer shall "act as President," when there is neither President nor Vice President. There appears to be no reason, then, for using the style "Acting President" in the case of the Vice President succeeding to the office.

Sec. 2, Clause 1.—*The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.*

Command of the Army and Navy.—Most writers on the Constitution have regarded the authority to command the army and navy as necessarily belonging to the executive department. This is the opinion of Story and Kent and Duer.

The command of the army and navy is obviously a vast power. It involves also the entire government of territory acquired by war, until Congress takes control by passing laws for its government. For instance, Porto Rico was ruled by President McKinley, either directly or through the War Department and the army, for more than a year after Spain gave it up to the United States; and the Philippines were under the same government for a still longer period.

There has been much discussion as to whether the provisions of the Constitution apply at once, of their own force (*ex proprio vigore*), to new territory acquired, or whether the government by President and Congress is unlimited thereby until Congress extends the Constitution to the new territory. The decisions of the Supreme Court in 1901, concerning the Porto Rico tariff, took middle ground, declaring that some parts of the Constitution do not apply at once, but intimating that other parts do.

The Heads of Departments.—The only reference in the Constitution to the heads of the executive departments is found in this and the following clauses. The language implies that such departments would be established, but the Constitution neither in Section 8 of Article I., nor elsewhere, specifies the power to establish them as one of the powers belonging to Congress. The heads of these departments are

the advisers of the President. Collectively they are called his Cabinet. They have frequent meetings at which measures are discussed, and in addition their written opinions are given to the President whenever he requires them. The opinions of the Attorneys-General fill a number of volumes.

The President, and not the Cabinet, is responsible for the measures of the administration; yet, as heads of departments established by law, the members of the Cabinet have duties which can not be neglected. Their position may thus become one of no little delicacy.

Reprieves and Pardons.—A reprieve suspends for a time the execution of a sentence, especially when the criminal has been sentenced to death. A pardon is a full release from the punishment which would otherwise be inflicted. The power to reprieve or pardon implies the possible imperfection of human justice. Circumstances may come to light after a trial which, had they been known before, would have secured a different result. This prerogative of mercy is found in all civilized governments, and it is properly lodged with the executive. Our Constitution gives it to the President, except in cases of impeachment.

When may a Pardon be Granted?—The language of the Constitution is that the President shall have power "to grant reprieves and pardons." For the meaning and use of the expression "to grant pardons," we are referred to the English law, which allowed the king, as the sovereign, to pardon before trial as well as after. Was this the intention of the framers of our Constitution? Mr. Justice Field, in giving the opinion of the Supreme Court in the case of Garland, said: "The power thus conferred is unlimited, with the exception stated; it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."

Mr. Tiffany views the matter differently. "To pardon or

reprieve a man implies that he has become, in the eye of the law, the subject of punishment to be inflicted upon him. It implies that the law has pronounced him guilty, and denounced upon him the penalty. The executive, as an officer of the law, can know nothing of the guilt or innocence of a party, or of his need of a reprieve or pardon, until his guilt has been judicially ascertained. No reprieve or pardon can, in law, be granted until there be that from which a reprieve is needed, or for which a pardon is demanded."[1] "There may be cases, as in rebellion or civil war, where a large class of citizens may need, and public policy may require, an amnesty in their behalf. But such exigency addresses itself to the *legislative*, not to the *executive* department of government."[2]

This seems to have been the view of Congress when, by act of July, 1862, it authorized the President to extend pardon and amnesty by proclamation to those in rebellion against the government, with such conditions as he might deem expedient. On the 3d of December, 1863, President Lincoln issued an amnesty proclamation, referring to this action of Congress. Other proclamations were issued by Mr. Lincoln and Mr. Johnson prior to the repeal of the section authorizing such offers of amnesty. The latter, however, issued proclamations of like character after the repeal—January 19th, 1867—giving the Constitution as his authority, in answer to an inquiry made by the Senate.

The Pardoning Power in the States.—In some of the State constitutions the governors are authorized to pardon after conviction; as if before the conviction of the criminal there were no legitimate place for pardon.

Clause 2.—*He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by*

[1] Tiffany, page 335. [2] Ibid, page 338.

and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

"Advice and Consent."—The "advice and consent" of the Senate, both in making treaties and in appointments to office, is, in practice, consent rather than advice. The treaty is prepared and then sent to the Senate for its concurrence. A nomination is made by the President, and the Senate acts upon the question of confirmation.

Treaties.—A treaty is an agreement or contract between two nations. In Great Britain the power to make treaties is in the Crown. In a republic the people may place it where they choose. The wisdom of giving it to the President and Senate will hardly be questioned. To give it to the President alone would intrust to him more power than is consistent with the nature of our government. It could not well be placed in Congress because of the promptness and secrecy often necessary. By requiring the concurrence of two thirds of the Senate with the President, the Constitution has provided as ample a guaranty as could well be required for the maintenance of the rights and honor of the country.

The Treaty Power Limited.—While the power to make treaties is general and unrestricted, it is not to be so construed as to destroy the fundamental laws of the land. "A treaty to change the organization of the government, to annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy what it was designed merely to fulfill, the will of the people."[1]

Acquisition of Territory.—Cases may arise where a given end may be reached either by a treaty or by ordinary legislation. Thus Congress

[1] Story, § 1508.

authorized the admission of the Republic of Texas in either of two modes —by treaty, to be negotiated by the executive with that republic; or by the acceptance, on the part of Texas, of certain terms specified in the joint resolution of the two houses. "The annexation was made, in fact, by the acceptance of the propositions of Congress. So that the treaty was made directly with Texas by Congress, and not by the President with the advice and consent of two thirds of the members of the Senate, as the treaty-making power."[1] The Hawaiian Islands were annexed by joint resolution of Congress, whereas Porto Rico and the Philippines were acquired by treaty.

Payment of Money Under Treaty.—If a treaty made by the President and Senate with a foreign power involve the payment of money, can Congress exercise any discretion as to the appropriation? This question came up during the administration of President Washington, and was debated with great earnestness in the House of Representatives. The treaty was one made by Mr. Jay with Great Britain, and in some of its features was obnoxious. The House by a large majority passed a resolution that whenever a treaty required laws to be passed to carry it into effect, it had a constitutional right to deliberate and determine the propriety or impropriety of passing such laws, and to act thereon as the public good should require. Shortly after, however, Congress passed a law to carry the treaty into effect.

Opinion of Kent.—Says Chancellor Kent, "If a treaty be the law of the land, it is as much obligatory upon Congress as upon any other branch of the government or upon the people at large, so long as it continues in force and unrepealed."[2]

Purchase of Territory.—In the three great cases of the purchase of Louisiana, of Florida, and of California, Presidents Jefferson, Monroe, and Polk consulted Congress beforehand to ascertain its wishes in the matter, thus apparently recognizing the authority of the House of Representatives to make or refuse the necessary appropriations.

[1] Farrar, page 333. [2] Vol. I., page 156.

It is probable, however, that the framers of the Constitution did not contemplate the purchase of territory as belonging to the treaty-making power, and President Jefferson at the time Louisiana was purchased admitted that the authority to make the purchase was not given to the government in the Constitution. Prior to the purchase of Alaska, Congress was always consulted wherever it was proposed to enlarge our domain; but in the cases of the purchase of Alaska and of the Philippines Congress was not consulted. These cases seem to establish the principle that the treaty-making power covers the acquisition of territory.

Treaty-making.—In framing a treaty the President acts through the Secretary of State, a foreign minister, or a plenipotentiary appointed for the purpose. The treaty is signed by the representatives of the two nations, and then submitted to the respective governments for their ratification. After the ratifications have been exchanged, the President issues his proclamation making the treaty public, "to the end that it may be observed with good faith by the United States and the citizens thereof."

In discussing a treaty, as well as in considering a nomination, the Senate sit with closed doors. This is called going into executive session. Two thirds of the members present must concur in the ratification of a treaty, while a majority is sufficient to confirm a nomination to office.

Nominations to Office.—Nominations are sent to the Senate by the President in writing. The nomination is by the President alone. The Senate can confirm the nomination or reject it, but it can not make the nomination. The wisdom of this mode of appointment is thus stated by Mr. Hamilton: "The blame of a bad nomination would fall upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate, aggravated by the consideration of their having counteracted the good intentions of the executive. If an ill appointment should be made, the executive for nominating, and the Senate for approving, would participate, though in different degrees, in the opprobrium and disgrace." [1]

[1] Federalist, No. 77.

Appointment of Inferior Officers.—The Constitution provides that ambassadors, other public ministers and consuls, and judges of the Supreme Court, *must* be appointed by the President and Senate; but such "inferior officers" as Congress may designate, may be appointed by the President alone, by the courts, or by the heads of departments. It has not been determined who are, or who are not, "inferior officers"; but it may be considered settled that the heads of departments do not belong to this class. If Congress does not vest the appointment of any officer in the President alone, in the courts, or in the head of a department, then, as a matter of course, the President and Senate appoint, no matter how insignificant the office may be.

The appointment of "inferior officers" is not a judicial duty in its nature. It is the only nonjudicial duty enjoined by the Constitution upon the courts of the United States. The power to designate officers to be appointed by the courts has been very sparingly exercised by Congress. This is as it should be. The character of courts should not be compromised in the public confidence by such controversies as partisan or unpopular appointments tend to provoke. The courts hold the most sacred trusts of any of the three departments of our government, and it is essential to the successful discharge of their functions that they shall enjoy the confidence of the citizens upon whose rights they are to pass judicially. To this end they should be relieved of all matters tending to arouse partisan feeling, which is prolific of suspicion. The fundamental division of the executive, judicial, and legislative functions also requires that the courts do as little of this nonjudicial duty as possible.

The heads of departments, however, have been intrusted with such appointments to a very large extent. Formerly, the Postmaster-General could appoint and remove all deputy postmasters. This gave him an enormous patronage, which was continually increasing. But the Thirty-seventh Congress, at its third session, enacted that the Postmaster-General should appoint those deputies only whose compensation is less than one thousand dollars a year, all others being appointed by the President.

Removal from Office.—While the Constitution makes provision for appointment to office, it says nothing in regard to removal from office. At the time the Constitution was under

discussion in the States, its friends spoke of the consent of the Senate as no less necessary for the removal of an officer than for his appointment.[1] But in the First Congress the question came up in the House of Representatives, and was discussed at great length. In a bill establishing a Department of Foreign Affairs—now called the Department of State—it was provided that the Secretary might be removed by the President. The debate occurred on a motion to strike out this provision.

The Two Views.—It was maintained on the one side that the power to appoint and the power to remove must go together; if the President could appoint only with the consent of the Senate, its consent must also be necessary to remove. On the other side it was held that appointing to office and removing therefrom were executive acts. If the Constitution had not associated the Senate with the President in the matter of appointments, Congress could not have given it that power; and as the Constitution had not conferred upon the Senate the power to unite with the President in removal, Congress was not authorized to associate it with the President in removing from office.[2] The bill, with the provision authorizing the President to remove from office, finally passed the House of Representatives by a vote of twenty-nine to twenty-two, and the Senate by a majority of two. How strong was the opposition to giving such power to the President appears from the language of Mr. Sumter, of South Carolina, who said: "This bill appears, to my mind, so subversive of the Constitution, and in its consequences so destructive of the liberties of the people, that I can not let it pass without expressing my detestation of the principle it involves."[3]

Language of Story.—"That the final decision of this question in favor of the executive power of removal was greatly

[1] "The consent of that body would be necessary to displace as well as to appoint."—Federalist, No. 77.

[2] *Annals of Congress*, I., page 463. [3] Ibid, page 591.

influenced by the exalted character of the President then in office, was asserted at the time, and has always been believed; yet the doctrine was opposed, as well as supported, by the highest talents and patriotism of the country. The public, however, acquiesced in the decision; and it constitutes, perhaps, the most extraordinary case in the history of the government of a power conferred by implication on the executive by the assent of a bare majority of Congress, which has not been questioned on many other occasions."[1]

Early Removals Few.—For forty years after the adoption of the Constitution there were very few removals from office, except as a public necessity to secure greater efficiency in the discharge of official duty. Such, unquestionably, was the expectation when the Constitution was formed. Mr. Madison, in the debate referred to above, used the following language: "I contend that the wanton removal of meritorious officers would subject him (the President) to impeachment and removal from his own high trust."[2]

Removals under Jackson.—But, although for many years men were appointed to office for their fitness, a change had taken place before the first half century had elapsed. In 1835, during the second term of General Jackson's administration, a committee of the Senate, Mr. Calhoun, chairman, appointed to investigate the subject of "executive patronage," used the following language in its report: "It is easy to see that the certain, direct, and inevitable tendency of this practice is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt. Were a premium offered for the best means of extending to the utmost the power of patronage; to destroy the love of country and substitute a spirit of subserviency and man-worship; to encourage vice and discourage virtue; and, in a word, to prepare for the

[1] Story, § 1543. [2] *Annals of Congress*, I., page 497.

subversion of liberty and the establishment of despotism, no scheme more perfect could be devised."[1]

Act of 1866.—Although bills had been introduced into Congress to limit the President's power of removal, no law to that effect was passed until 1866. In July of that year it was enacted that "No officer in the military or naval service shall, in time of peace, be dismissed from service except upon and in pursuance of the sentence of a court martial to that effect, or in commutation thereof." This was under the administration of President Andrew Johnson.

Act of 1867 on Tenure of Office.—In March, 1867, an "Act regulating the tenure of civil offices" was passed, which provided that the President might suspend an officer during a recess of the Senate, reporting the same with the reasons for it to the Senate within twenty days after their assembling; if the Senate should concur in the removal, another person might be appointed. But if the Senate should not concur, the suspended officer was to resume his duties. This bill was vetoed by President Johnson, but passed over his veto by a large majority in each house. It was chiefly for violating the provisions of this act in removing Secretary Stanton after the Senate had refused to concur in his suspension, that the House of Representatives brought articles of impeachment against the President.

Act of 1869.—This act was modified by act of April 5th, 1869, repealing the clause requiring the President to report to the Senate the reasons for suspending an officer, and the clause providing that the suspended officer might resume his duties if the reasons for suspension were not satisfactory to the Senate. Practically, the President might remove an officer by nominating one to succeed him; and should the Senate fail to confirm the nomination the President could name another person.

Thus, after more than three quarters of a century, the legislative construction given to the Constitution in 1789 was

[1] Senate Doc., 2d Sess., 23d Cong., vol. 3, No. 109.

reversed in 1867. In each case the action of Congress was doubtless largely influenced by their estimate of the character of the executive. The question has never yet been the subject of judicial construction.

The repeal in 1887 of the act of 1867 places this subject where it was left in 1789.

The frequent changes in office, and the appointment of men often sadly deficient in intellectual and moral qualifications, form one of the sources of official corruption. The subject of "Civil Service Reform" has been largely discussed, and various plans have been suggested to remedy existing evils. Three things have been affirmed to be requisite in order to bring about a reform: a competitive examination of all candidates for subordinate offices; promotion to higher grades on the principle of service and desert; and a tenure of office during good behavior, or for a term of years.

The Civil Service Act of 1883.—In 1883 was passed "An Act to regulate and improve the civil service of the United States." Something had been done in 1853 and 1855, and President Grant introduced competitive examination, but the appropriations were soon discontinued. The law of 1883, known as the Pendleton bill, provides for competitive examination as the means of selecting appointees to many thousand positions in the public service. No officers are included whose appointment needs the confirmation of the Senate.

The Eight Rules.—In accordance with the Act of 1883 the President appoints by and with the advice and consent of the Senate a United States Civil Service Commission of three persons, not more than two of whom are of the same political party. The commission aids the President in preparing rules which provide and declare (1) for competitive examinations of applicants for positions in the public service classified under this law; (2) that all the positions so classified shall be filled from among those graded highest as the results of the competitive examinations; (3) for the apportionment of the

appointments among the several States and Territories and the District of Columbia, on the basis of population (each applicant is required to file a statement under oath of his residence); (4) for a period of probation before permanent appointment; (5) that no appointee shall be required to contribute to any political fund or to render any political service; (6) that no appointee has any right to use his official authority or influence to coerce the political action of any one; (7) for holding noncompetitive examinations where competent persons do not compete; (8) that the appointing power shall notify the commission of the selection of applicants from those examined, of their residences, of the rejection of any after probation, and of transfers, resignations, and removals. The commission keeps a record of these facts. These are the eight fundamental rules of the Civil Service. Any exceptions to them are required to be specially made or stated by the commission in its annual report.

The commission, subject to rules made by the President, has control of the examinations. It may investigate the enforcement of the law and report upon the same. It must make an annual report on its own action, the rules adopted, etc., to the President and Congress.

Examiners.—The commission chooses boards of examiners at Washington and at various places in the States and Territories. Where there are persons to be examined the examinations are held not less than twice a year. Each board of examiners consists of not less than three persons in the public service. The various boards are assisted in this work of conducting examinations by a chief examiner whose principal duty is to see that they act justly. The chief examiner receives a salary of $3,000 per year, and the commissioners $4,000 each. Frauds and misbehavior in the conduct of the examinations are severely punished as misdemeanors.

The Classified Service.—The Secretary of the Treasury is required to classify the employees in every customs district in which they number fifty or over. The Postmaster-General is required to do the same in any post office of fifty or more employees. They are also required to extend the classification of the service in their respective departments on direction of the President, and the President may direct the classification of the other departments by the heads thereof.

Not more than two members of one family can be appointed to the classified service. No recommendation of an applicant by a senator or representative, except as to the character or residence of the applicant, can be received by the examining board. No congressman or member elect, no officer of the United States, and no person in the public service, can be connected in any way with the solicitation or receipt of a subscription for a political purpose from any officer or employee. The receipt of political contributions in United States buildings or grounds is prohibited.

Extension of the Classification.—This law to be practical contemplated and required the formulation and adoption of rules relating to details and to the multifarious grades and classes of employees in the public service. President Arthur made some orders during the latter part of his administration. President Cleveland extended the application of the law by executive orders and perfected its operation by promulgating rules. The same may be said of President Harrison, President Roosevelt, and other Presidents. The number of civil service positions now filled on the basis of competitive examinations is over 225,000, or more than half of all positions in the civil service.

Clause 3.—*The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*

Commissions.—When an appointment has been made in the usual mode, that is, the President having nominated and the Senate having confirmed, the commission is not made out till the Senate has signified its concurrence. If the person nominated by the President is rejected by the Senate, of course no commission is issued. But when a vacancy is filled in the recess of the Senate, the President grants a commission, which continues in force only to the end of its next session. If the President nominates to the Senate one whom he has thus appointed and commissioned, and the Senate

confirms the nomination, a new commission is issued, and if a bond has been given under the first appointment, a new one is required.

Washington's View of a "Vacancy."—Some have held that the first appointment to a new office can not be made during the recess of the Senate, as strictly, they say, no *vacancy has happened* in that case. President Washington did not so interpret the words. In May, 1796, the office of surveyor general was created by law. In October, during the recess of the Senate, the President appointed Rufus Putnam to the office, the language of the commission being, "Whereas, a vacancy exists in the office of surveyor general," etc. When the Senate convened he nominated General Putnam and the Senate confirmed him.

Suppose a vacancy had been filled by the President in the recess of the Senate, and the officer thus appointed should be nominated to the Senate at its next session and be rejected; could the President, after the adjournment of the Senate, reappoint the same person? Would this be a "vacancy" in the meaning of the Constitution? If the Senate has rejected an officer, the President should not appoint him to the same office. The consent of the Senate to an appointment is clearly required by the Constitution, and that instrument contemplates action by the President alone only when there is no opportunity to consult the Senate.

If the Senate takes no action upon a nomination, the President, whose duty it is to see that the laws are executed, must make the appointment himself. Such a case occurred under the administration of President J. Q. Adams. President Monroe made a nomination which was rejected, and after the expiration of the session filled the vacancy by an appointment. President Jackson nominated a person whom the Senate rejected, and he subsequently renewed the nomination of the same person. The Senate laid the nomination on the table, and adjourned without taking further action on the subject. After the adjournment of the Senate, the President appointed the man. It would have been better if the Senate had acted upon the nomination. President Cleveland nominated one who had

been already rejected, and the Senate rejected him again. This led to the nomination of another man.

Section 3.—*He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.*

President's Message.—It is customary for the President, at the beginning of each regular session, to send a *message* to Congress, which contains a summary of the reports from the heads of departments, and a general account of the operations of the government for the year, with such suggestions as he may deem expedient. Accompanying the message are the full reports of the various departments, and documents containing detailed information as to every branch of the government. The "Message and Documents" and "Executive Documents" fill annually a number of octavo volumes. The President also sends special messages from time to time, recommending such measures of legislation as he thinks the interests of the country require, or containing information requested by Congress.

Delivery of the Message.—President Washington delivered his first message to both houses assembled in the Senate Chamber. He continued to deliver his messages in person at the opening of each session of Congress, during the eight years of his administration, and his example was followed by Mr. Adams. Each house appointed a committee to prepare a reply, which, when adopted by the house, was presented to the President. This was in accordance with the custom of

Great Britain and other constitutional governments. Mr. Jefferson, however, preferred to send his message, to be read to each house by its clerk. There was no expectation of an answer. This custom has been followed to the present time.

Congress Convened by the President.—The authority given to the President to *convene* Congress has been used on a number of occasions. President Adams called an extraordinary session for May 15th, 1797, on account of the difficulties with France; President Jefferson, October 17th, 1803, because of the purchase of Louisiana and difficulties with Spain; President Madison, May 22d, 1809, and again May 24th, 1813, both because of difficulties with Great Britain; President Van Buren, September 4th, 1837, to consider the financial condition of the country; President Harrison, May 31st, 1841,[1] for the same purpose; President Pierce, August 21st, 1856, because of the Kansas troubles; President Lincoln, July 4th, 1861, on account of the war in the South; President Hayes, October 15th, 1877, for want of an appropriation for the army, and again March 18th, 1879, for the failure to pass the appropriation bills; President Cleveland, August 7th, 1894, to repeal the Sherman Act; President McKinley, March 15th, 1897, to pass a revenue bill; President Roosevelt, November 9th, 1903, to approve a treaty with Cuba; President Taft, March 15th, 1909, to revise the tariff, and April 4th, 1911, to consider reciprocity with Canada.

The House of Representatives has never been convened alone, but the Senate has often been, for executive business.

The two houses have almost always agreed promptly in regard to the time of adjournment, and the President has never adjourned them. In Great Britain the sovereign may at any time prorogue or dissolve Parliament.

Receiving Ambassadors.—The President receives ambassadors and other public ministers. Diplomatic intercourse with other nations is carried on through the executive department. Instructions to our foreign ministers, though bearing the signature of the Secretary of State, are always in the name and by the order of the President. To receive an ambassador or other public minister is to recognize the country from which he comes as belonging to the commonwealth of nations.[2]

[1] The proclamation was issued March 17th, and President Harrison died April 4th.

[2] Congress could probably reverse the action of the President.

The Southern Confederacy made great efforts to secure such recognition from Great Britain and France during the civil war.

The power to receive involves the power to refuse to receive, or to reject and dismiss. This may be done for reasons pertaining to the minister himself, as in the case of M. Genet, the French minister whom President Washington requested France to recall in 1793; or on account of the relations of the two governments.[1]

Execution of the Laws.—The President "shall take care that the laws be faithfully executed, and shall commission all the officers of the United States." To see that the laws are executed is the great duty of the President. He is not to make the laws, or repeal them, save as the Constitution gives him a qualified negative in their enactment, but to take care that the laws are duly enforced. When the meaning of a law is judicially called in question, it is not the province of the President to decide as to the true meaning and intent of the statute; this belongs to the courts. He may differ from the Supreme Court as to the interpretation of a law or a clause of the Constitution, or he may think a statute unwise or inexpedient; still, whatever has been enacted in accordance with the forms prescribed by the Constitution must be executed in good faith by the President. For this purpose he is clothed with great power; the army and navy are under his orders. Either directly or indirectly all executive offices are filled by men of his selection. It is his duty, therefore, to see that none are appointed to office but those who are honest and capable.

Use of the Army to Enforce Laws.—The question of the power of the President of the United States to employ the regular army in case of domestic disturbance became a subject of controversy in 1894. In that year, a great strike of railway employees was declared. As a result of

[1] Other ministers have been recalled at the request of our government, viz., Mr. Jackson, the British minister, in 1809; M. Poussin, French, 1849; Sir John Crampton, British, 1856; M. Catacazy, Russian, 1872; Lord Sackville, British, 1888.

this some rioting occurred in railroad yards at Chicago. President Cleveland directed General Miles, who was then commanding at Fort Sheridan, to use the troops of his command to preserve order, suppress rioting, and protect property. Governor Altgeld of Illinois protested against the employment of federal troops as an unconstitutional invasion of the authority of the State of Illinois by the national government. An altercation by telegraph and mail followed between these two executives. The President justified his course on the ground of protecting the United States mails and interstate commerce. The President undoubtedly has the power to protect the United States mail and United States property regardless of any call or protest from the executive of the State in which the disorder arises.

Section 4.—*The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

Impeachment.—The other instances in which impeachments are referred to in the Constitution are these: The House of Representatives shall have the sole power of impeachment; The Senate shall have the sole power to try impeachments; When the President of the United States is tried, the Chief Justice shall preside; In trials for impeachments, the Senate shall be on oath or affirmation, and the concurrence of two thirds shall be necessary for conviction; Judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; The party convicted may also be tried and punished according to law; The President has power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment; The trial of all crimes, except in cases of impeachment, shall be by jury.

Who may be Impeached.—While it is clear that the House of Representatives only can prefer articles of impeachment and the Senate only can try impeachments, it is not clear who may be impeached. Section 4 prescribes a minimum punishment for all "civil officers" on conviction, but the Constitution nowhere defines "civil officers," nor does it say that others are not liable to impeachment. The term *civil* is here supposed to be used in distinction from *military* and *naval.*

Some understand that members of Congress are not included under the designation "civil officers," as Section 3, Article II., provides that the President "shall commission all the officers of the United States." As members of Congress are not commissioned by the President it is inferred that they are not "officers" in the sense of the Constitution.

Senator Blount.—Articles of impeachment were brought against William Blount, United States senator from Tennessee, in 1797. The day after the resolution to impeach passed the House, Mr. Blount was expelled from the Senate, by a vote of twenty-five to one. Action, however, was taken by both houses for going on with the impeachment. Articles of impeachment were agreed to January 29th, 1798, and the Senate summoned Mr. Blount to appear and answer in the December following. At that time the Senate formed itself into a court, and counsel for the defendant appeared and filed a plea that the Senate could not impeach one who was not *then a senator*, and who was not an *officer* of the United States when the offenses charged were committed. The question of jurisdiction was then argued, and the court decided,[1] fourteen to eleven, that it had no jurisdiction, and so the case ended. The decision is supposed to have been on the ground that a senator is not a "civil officer" of the United States.

It appears that all "civil officers" may be impeached for "high crimes and misdemeanors," and, if convicted, they *shall* be removed from office, and *may* be disqualified for any office under the government. It does not appear that they may not be impeached for other and lesser offenses, and punished in the same manner, or otherwise, not exceeding that.

"It was the opinion of the framers and early administrators of our government that all the civil officers were impeachable for minor malfeasances in office, not amounting to high crimes or misdemeanors at law, and punishable in any manner not exceeding removal from, and disqualification for, office."[2] Mr. Madison's language in regard to removal from office has already been quoted: "The wanton removal of meritorious officers would subject him (the President) to impeachment and removal from his high trust."

[1] *Annals of Congress*, 5th Congress. [2] Farrar, page 436.

Cases of Impeachment.—Besides the case of Senator Blount, there have been seven instances of impeachment. The first was that of Judge John Pickering, of the District Court of New Hampshire, in March, 1803. The second was that of Judge Samuel Chase, of the Supreme Court, in March, 1804. James H. Peck, District Judge of Missouri, was impeached in April, 1830; West H. Humphries, District Judge of Tennessee, in May, 1862; Andrew Johnson, President of the United States, in February, 1868; William W. Belknap, Secretary of War, in March, 1876; and Charles Swayne, District Judge of Northern Florida, in January, 1905.

The charge against Senator Blount was an attempt to carry into effect a hostile expedition in favor of the British against the Spanish possessions in Florida and Louisiana, and to enlist some Indian tribes in the same.

Judge Pickering was charged with great irregularities on the bench, as well as gross intemperance. He was undoubtedly insane at the time he was impeached, and did not appear in person or by counsel. The decision, on March 12th, 1804, was that he was guilty of the charges, by vote of nineteen to seven. By a vote of twenty to six he was removed from office.

Judge Chase was charged with improper conduct on the bench, as manifesting partiality, injustice, and oppression. There were eight articles of impeachment, on two of which eighteen Senators voted "guilty," and sixteen "not guilty"; on the other six articles the majority voted "not guilty." He was, therefore, acquitted on every article. John Randolph was the leading manager on the part of the House to conduct the case.

Judge Peck was impeached for an abuse of his judicial power in punishing Mr. L. E. Lawless, an attorney, for contempt. The offense of Mr. Lawless was the publishing in a newspaper of a criticism on a decision by Judge Peck, and he was punished by imprisonment for twenty-four hours, and suspension from the bar for eighteen months. The decision was in favor of Judge Peck, twenty-one Senators voting "guilty," and twenty-two "not guilty." Mr. James Buchanan was the chairman of the managers.

Judge Humphries was impeached for "aiding the rebellion, for illtreating loyal men, confiscating their property," etc. He did not appear in person or by counsel. The Senate pronounced him guilty on each of the seven articles, and by a unanimous vote he was removed from office, and

disqualified from holding any office of honor, trust, or profit, under the United States. Mr. John A. Bingham was the chairman of the managers.

President Johnson was impeached for removing Secretary Stanton from office in alleged violation of the act regulating the terms of certain civil officers, passed March 2d, 1867, and for affirming that the Thirty-ninth Congress was no Congress, etc., etc. The President had suspended the Secretary in August, 1867, but the Senate voted in January, 1868, not to concur in the suspension. In February the Secretary, who had resumed his office, was removed by the President. Three days afterward the House passed resolutions of impeachment. The articles were read to the Senate March 4th, and the trial ended May 26th. Thirty-five Senators voted "guilty" and nineteen "not guilty." Hence the result was an acquittal. Mr. John A. Bingham was the chief manager.

Secretary Belknap was impeached for receiving money for an appointment to the post of trader at Fort Sill. Though he had resigned before the House took action, the Senate decided, thirty-seven to twenty-nine, that it had jurisdiction. The trial resulted in an acquittal, August 1st, 1876, thirty-seven voting "guilty" and twenty-five "not guilty."

Judge Swayne was impeached for irregularities in money matters, for not residing in his district as required by law, and for abuse of judicial power. The decision, February 27th, 1905, was in his favor, a majority of the Senators voting "not guilty."

ARTICLE III.

The Judiciary.

Section 1.—*The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.*

The judiciary is the third of the three great departments of the general government. The Constitution itself provides for one Supreme Court, but leaves to Congress to determine

how many inferior courts should be established. The *organization* of the Supreme Court is also left to Congress.

Classes of Courts.—At the first session of Congress, in 1789, an act to organize the judiciary was passed. Two inferior courts were established, called the Circuit Court and the District Court. While there were thus three distinct courts, there were but two kinds of judges—Supreme and District [1]—the Circuit Court being held by a Supreme Judge and a District Judge.

The country was divided into thirteen districts, in each of which a judge was to be appointed, who was to hold a court four times in each year. These districts were grouped into three circuits, in each of which a Circuit Court was to be held twice a year. The Supreme Court consisted of a Chief Justice and five Associate Justices. In 1807 the number of Associates was increased to six; in 1837 to eight; and in 1863 to nine. This court was to hold two sessions each year at the seat of government. With the development of the Union the number of inferior courts was increased, till, in 1863, there were ten circuits and about forty districts.

From 1793 till 1869 the Circuit Court was composed of one Judge of the Supreme Court and the District Judge. In 1869 an act of Congress was passed, creating Circuit Judges, one for each of the nine circuits into which the country was then divided. The same act made the Supreme Court to consist of a Chief Justice and eight Associate Justices, corresponding to the number of circuits.

In 1891 another inferior court—the Circuit Court of Appeals—was established in each of the nine circuits. These courts have final decision in certain minor cases and have only appellate jurisdiction. In the same act provision was made for the appointment of nine additional Circuit Judges, one for each circuit. Before this (in 1887) there had been provided an additional Circuit Judge for the Second Circuit; and several additional Circuit Judges have been provided

[1] In February, 1801, an act was passed providing for the appointment of sixteen Circuit Judges, but the act was in force but a single year, being repealed in March, 1802.

since then. The number of District Judges (one or more in each State) is now more than ninety.

In 1911 the Circuit Courts were abolished, their jurisdiction being given to the District Courts.

Office during Good Behavior.—We have seen that representatives are elected for two years, senators for six, and the President for four. But United States judges hold office *during good behavior*. This is virtually for life, for these judges can be removed from office only by impeachment. As the judges are not elected by the people, but appointed by the President and Senate, they would be virtually dependent on the other departments of the government if their term of office were not during good behavior. If the President, or the President and Senate, could remove them at pleasure, or if they were appointed for a limited term, the judges could not be truly independent. It was the purpose of the Constitution to make this department coördinate with the others, and with no more dependence upon them than they should have upon it. The independence of the judiciary is quite as important in a republic as in a monarchy.

Success of the Judicial System.—All the plans submitted to the Convention contained this provision, that the judges should hold their offices during good behavior. While Messrs. Randolph, Pinckney, Patterson, and Hamilton differed as to many other things, they agreed entirely as to the term of office of the judges. The practical working of the system has been such as to commend it to the people. The judges, made thus independent of the other departments of the government, and removed from the fluctuations of popular opinion, have discharged the duties of their high trusts with firmness and dignity. In some instances men have been appointed to the bench who had previously been intense political partisans, but with scarcely an exception they have laid aside party feeling when entering upon office, and as judges have devoted themselves faithfully and conscientiously to their appropriate duties of interpreting and applying the laws and the Constitution.

Court of Claims.—In 1855 a Court of Claims was established, which hears claims against the government founded

on a law of Congress, on any regulation of an executive department, or on any contract, express or implied, with the government of the United States.[1] Before the organization of this court, those who had claims against the government which were not allowed by the departments had no remedy but to petition Congress. The court reports its proceedings to Congress, and when its decision is favorable to a claimant, a bill is prepared for carrying the decision into effect. This bill comes before Congress for its action like other bills. The Court of Claims consists of five judges, who hold their offices during good behavior. An appeal from the Court of Claims to the U. S. Supreme Court is allowed as to matters of law.

Other Special Courts.—In 1909 Congress created a Court of Customs Appeals, of five judges, with jurisdiction in cases of disputed rates of duty. In 1910 it created a Commerce Court, consisting of five Circuit Judges, to decide appeals from the orders of the Interstate Commerce Commission.

Courts of the District of Columbia.—The supreme court of the District of Columbia consists of a chief justice and five associates, who hold their offices during good behavior. Any one of these justices may hold a District Court for the District of Columbia, with the same powers and jurisdiction as are exercised by the other District Courts of the United States. From the supreme court of the District of Columbia, appeals may be taken to a court of appeals, consisting of one chief justice and two associate justices; and from this court, in some cases, to the Supreme Court of the United States.

Territorial Courts.—Supreme and district courts are established in the Territories, but they are not considered as an integral part of the judiciary of the United States. They are established by Congress in virtue of the general sovereignty which exists in the general government over the Territories. The judges are usually appointed for four years, unless sooner removed.

[1] In 1887 similar jurisdiction, in certain cases, was given also to the District Courts.

Commissioners.—The United States Commissioners are officers corresponding to justices of the peace in the States. They hold petty courts for determining whether accused persons should be held for the United States grand jury, and for passing on inferior maritime questions.

Three Grades of Judges.—The general judicial system of the United States consists of three grades of courts—the Supreme, the Circuit, and the District. There are also three grades of judges. The Supreme Court is held by the Supreme Judges, and the District Court by the judge for the district. The Circuit Court of Appeals in each circuit is usually held by three Circuit Judges; but sometimes one of them is replaced by a District Judge or by the Supreme Justice assigned to the circuit. The courts for the District of Columbia are special for that locality, and the Court of Claims is special in regard to claims.

Compensation.—The compensation of the judges of the United States courts shall not be diminished during their continuance in office. The propriety of this provision is obvious. If Congress could reduce their salaries at pleasure, it would place them at the mercy of the legislative department, and thus destroy their independence.

When the courts were organized in 1789, the salary of the Chief Justice of the Supreme Court was placed at $4,000, and those of the Associate Justices at $3,500 each. The District Judges received from $1,000 to $1,800. The salaries have been raised from time to time; in 1911 they were as follows: the Chief Justice, $15,000; the Associates, $14,500; the Circuit Judges, $7,000; and the District Judges, $6,000.

Provision for Retirement.—By act of February 15th, 1909, it was provided that any judge of any court of the United States, having held his commission ten years, and having attained the age of seventy years, might resign his office and receive the same salary during life which was payable, at the time of his retirement, for the office which he held ten years before the time of his resignation.

The Attorney-General.—The officers of the United States courts are attorneys, marshals, reporters, and clerks. The Attorney-General is charged with the duty of conducting suits in the Supreme Court in which the United States is concerned. He is also to give his advice and opinion upon questions of law when required by the President, or requested by the heads of any of the departments touching any matters that may concern their departments. He has a seat in the Cabinet, and is at the head of the Department of Justice established in 1870.

In the absence of the Attorney-General the Solicitor-General becomes acting Attorney-General. He is the second officer in rank in the department.

Officers of the Courts.—The Supreme Court has a reporter whose duty it is to report all the cases brought before that court. These reports are published, and now fill many volumes.[1] In each judicial district there is a district attorney, who attends to all cases in the District Court in which the United States is a party. Each district has also a marshal, who is the executive officer of the court, performing the same general duties in the United States courts as the sheriff in the State courts. He carries out the order or judgment of the court, and executes its process. The clerk keeps a record of all the proceedings, giving a history of each case, with all the orders, decrees, judgments, etc., of the court. He keeps the seal of the court, and has charge of any moneys paid. The attorney and the marshal are appointed by the President and Senate, but each court appoints its own clerk. The Supreme Court appoints also its own marshal and reporter; and the Circuit Court of Appeals, its own marshal and clerk. There are similar court officers for the various courts of special jurisdiction—Court of Claims, Courts of the District of Columbia, etc.

[1] The Reporters have been as follows:

Alexander J. Dallas,	1789 to 1800.	John W. Wallace,	1863 to 1875.
William Cranch,	1801 to 1815.	Wm. T. Otto,	1875 to 1883.
Henry Wheaton,	1816 to 1827.	J. C. Bancroft Davis,	1883 to 1902.
Richard Peters, Jr.,	1828 to 1842.	Charles Henry Butler,	1902 to ——.
Benj. C. Howard,	1843 to 1860.		
Jeremiah S. Black,	1861 to 1862.		

A reference to 5 Wheaton, 317, means the 5th Vol., 317th page of Wheaton's Reports.

Sec. 2, Clause 1.—*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States,—between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.*

Judicial Power Limited to Cases.—The judicial power extends to all *cases*, etc. The court has no power to act except when cases are brought before it. "All cases in law and equity are all suits, civil and criminal, involving controverted rights between party and party, and instituted in legal form of judicial proceedings."[1] Until a *case* has been regularly brought before the court, the judges have no power in regard to it. It is not their province to give information to Congress that a proposed law is unconstitutional, nor does it belong to them to advise the President that a law already enacted is in conflict with the Constitution. Their power is *judicial* merely.

When a suit is commenced and the case is before them, it is their duty to interpret the law involved, and to give the meaning of any part of the Constitution which may have a bearing upon the matter at issue. But the court can not go beyond the case which is before it and give its views as to points not involved. The judges do not make the law; they interpret and apply it; and this only as cases are regularly brought before the court.

Cases in Equity.—The judicial power extends to cases in *equity*. "It is the peculiar province of a Court of Equity to

[1] Farrar, page 458.

relieve against what are termed hard bargains. These are contracts in which, though there may have been no direct fraud or deceit sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties which a Court of Equity would not tolerate. In such cases, where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable as well as a legal jurisdiction."[1] In some of the States there are separate courts for cases of equity, called Courts of Equity or Courts of Chancery. In other States, the same court has jurisdiction both in law and equity; this is the case, as we have seen, in the United States courts.

Cases under the National Constitution, Laws, and Treaties. —The power extends to cases arising under the *Constitution, the laws of the United States,* and *treaties* made under their authority. The Constitution confers certain powers, grants certain privileges, and secures to the citizen certain rights. If a citizen should be injured in regard to any of these, he could seek redress in a United States court. If a law of the United States is violated, the offender must be tried before a national, not before a State court. Robbery of the mail, evasion of the revenue laws, counterfeiting the coin of the country, would be instances of this. Any disregard of the stipulations of a treaty, whether by an individual, a corporation, or a State, would lead to a case arising under the treaties made by the authority of the United States, which must be tried before a national court.

The propriety of referring to the courts of the United States the various cases enumerated in this clause can not be questioned. "The judicial power," says Chief Justice Jay, "extends to all cases affecting ambassadors, other public ministers, and consuls; because, as these officers are of foreign nations, whom this nation is bound to protect and treat accord-

[1] Federalist, No. 80.

ing to the laws of nations, cases affecting them ought to be cognizable only by national authority:

"To all cases of admiralty and maritime jurisdiction; because, as the seas are the joint property of nations, whose rights and privileges relative thereto are regulated by the laws of nations and treaties, such cases necessarily belong to national jurisdiction:

"To controversies to which the United States shall be a party; because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others:

"To controversies between two or more States; because domestic tranquillity requires that the contentions of States should be peacefully terminated by a common judicatory, and because, in a free country, justice ought not to depend on the will of either of the litigants:

"To controversies between a State and citizens of another State; because, in case a State—that is, all the citizens of it—has demands against some citizens of another State, it is better that she should prosecute their demands in a national court than in a court of the State to which those citizens belong, the danger of irritation and criminations arising from apprehensions and suspicions of partiality being thereby obviated:

"To controversies between citizens of the same State claiming lands under grants of different States; because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy:

"To controversies between a State, or the citizens thereof, and foreign states, citizens, or subjects; because, as every nation is responsible for the conduct of its citizens toward other nations, all questions touching the justice due to foreign nations or people ought to be ascertained by and depend on national authority." [1]

National Questions.—The judicial power of the United States is thus made to extend to all cases involving *national* questions. The Supreme Court is to construe the laws and Constitution of the United States. The crowning defect of the old Confederation was that there was no *national* judiciary. The United States had treaties with other nations, whose import, like that of other laws, must be ascertained by judicial determinations.

[1] 2 Dallas, 419, 475.

"To produce uniformity in these determinations, they ought to be submitted in the last resort to one *supreme tribunal.* And this tribunal ought to be instituted under the same authority which forms the treaties themselves. If there is in each State a court of final jurisdiction, there may be as many different final determinations on the same point as there are courts. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, all nations have found it necessary to establish one tribunal paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice." [1] "Thirteen independent courts of final jurisdiction over the same causes arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." [2]

Excellence of the System.—The good results anticipated from the judicial system of the United States have been, to a large extent, realized. "The act of September, 1789, providing for the organization of the courts, has stood the test of experience since that time with very little alteration or improvement; and this fact is no small evidence of the wisdom of the plan, and of its adaptation to the interest and convenience of the country. The act was the work of much profound reflection and of great legal knowledge; and the system then formed and reduced to practice has been so successful and so beneficial in its operation that the administration of justice in the federal courts has been constantly rising in influence and reputation." [3] The chairman of the committee that reported the bill was Oliver Ellsworth, of Connecticut, who subsequently held the office of Chief Justice of the Supreme Court.

Eleventh Amendment.—The Constitution, as it originally stood, allowed suits to be brought against a State by citizens of another State, or by citizens or subjects of a foreign state. This caused dissatisfaction on the part of the States, as they were unwilling to be arraigned before the United States courts on suits brought by private persons. For this reason

[1] Federalist, No. 22. [2] Federalist, No. 80. [3] Kent I., page 305.

an amendment to the Constitution was proposed by Congress March 5th, 1794:

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

This was ratified by the legislatures of three fourths of the States, and became a part of the Constitution, as announced by the President, January 8th, 1798. It is the Eleventh Amendment. While it relieves so far the dignity of the States, it weakens the power of the national judiciary to do justice to the citizen, which is one of the ends for which the Constitution was formed.

United States Courts not Open to Citizens of a Territory.—The word *State*, in this clause (Section 2, Clause 1), is interpreted by the courts as not including the Territories or the District of Columbia. Hence, a citizen of one of the Territories or of the District of Columbia can not bring a suit in a United States court. The national courts, which are open to the citizens of every State, and even to aliens, are closed against a portion of the citizens of the United States.

No direct suit can be brought against the United States either by a citizen or a State, without the authority of an act of Congress.[1] But claims against the government may be brought before the Court of Claims.

Nor are the officers of the general government liable to be sued for acts performed in the regular discharge of their official duties. "The suability of the officers for acts in the regular routine of their duties, and their liability to appear in courts, and plead such process, or answer for it in their own persons or property, would not only stop the wheels of

[1] 6 Wheaton, 411.

government, but break the whole machine to pieces, and put an end to that political ideal being—the United States."[1]

Clause 2.—*In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.*

Jurisdiction, Original and Appellate.—*Jurisdiction* is the power to hear and determine a cause. *Original* jurisdiction is the right to hear and determine a cause in the first instance. If a suit can be *commenced* in the District Court, for instance, then that court has original jurisdiction in the case. And if the case must be commenced in the lower court, and then can be carried, on appeal, to the Supreme Court, then the Supreme Court has only *appellate* jurisdiction in the case.

The Circuit Court of Appeals has appellate jurisdiction only.

The Constitution vests the judicial power in one Supreme Court and in such inferior courts as Congress may establish. One Supreme Court *must* be established, but Congress may exercise its discretion as to the number and character of the inferior courts. So, also, the Constitution itself prescribes the cases in which the Supreme Court shall have original jurisdiction; that is, the cases which may be commenced in the Supreme Court. In any other case to which the judicial power of the United States extends, the Supreme Court has appellate jurisdiction only.

"It has been decided by the court that this original jurisdiction can neither be enlarged nor diminished; because, if enlarged, it would detract from the constitutional appellate jurisdiction; and, if diminished, it would so far deny all jurisdiction to the Supreme Court, which can take

[1] (Wirt) *Opinions of Attorney-Generals*, I., page 457.

appellate jurisdiction only in 'other cases.' It must also be exclusive; because, if a case of this kind can originate in any other court, this court, not being able to take appellate jurisdiction, could have no jurisdiction at all." [1]

The language of this clause, as to the appellate power of the Supreme Court, implies the establishment of the inferior courts in which the suits can be commenced. As already stated, such inferior courts have been established: the District Courts, and several courts of special jurisdiction. The act of Congress establishing each court, as amended by later acts of Congress, prescribes in what cases it shall have original jurisdiction. Of some cases, for example, the District Courts have exclusive original jurisdiction; and of others, this jurisdiction is concurrent with the Court of Claims or with the State courts. So, also, the cases are prescribed which may be carried from these courts up to the Circuit Court of Appeals, and those which may be carried directly up to the Supreme Court.

If Congress had not made these exceptions and regulations, the Supreme Court would have, by the Constitution, appellate jurisdiction in all the cases coming under the cognizance of the national courts, except those in which the Constitution had given it original jurisdiction. Congress has excepted some cases out of the appellate jurisdiction of the Supreme Court, giving the final disposition of them to the inferior courts.

The Act of 1789 provides for the exercise of appellate power by the Supreme Court in certain cases which have been decided by the highest State courts. Of course, these cases involve the Constitution, laws, or treaties of the United States; otherwise, the decision of the State supreme court would be final.

Two Views of Appellate Jurisdiction.—Two views are held as to the appellate jurisdiction of the courts. The language of the Constitution is,

[1] Farrar, page 468.

"In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make." Some maintain that the expression, "with such exceptions and under such regulations as the Congress shall make," gives Congress the control of the whole matter. They hold that the courts can exercise appellate jurisdiction in those cases only which Congress has provided for.

Others hold that the Constitution itself vests the judicial power of the nation in the Supreme Court and such inferior courts as Congress may establish. As Congress is not dependent upon the President for authority to legislate, neither are the courts dependent on Congress for authority to exercise their judicial functions. According to this view the whole judicial power belongs to the courts. "Congress may remove or 'except' some cases out of the appellate jurisdiction of the Supreme Court by giving it to some other court of the United States, but not by abolishing it, or leaving it to be exercised or not by anybody else." Though the former of these views has been the one adopted in the main, both by the legislative and the judicial departments of the government, the latter seems to be more in accordance with the spirit and letter of the Constitution.

Judicial Power in the United States and Great Britain.— The courts of the United States have a wider scope than those of Great Britain. If a law of Congress conflicts with the Constitution, the Supreme Court may declare it null and void. But the courts of Great Britain can only interpret and apply the statutes of Parliament; they can not declare them null. There is no question of constitutionality or unconstitutionality touching an act of the British Parliament. Parliament itself is supreme for lawmaking purposes; it possesses all the legislative power of the British people. But while Congress can repeal or amend its own statutes, it can not alter or amend the Constitution. The Constitution is the work of the people, and they alone can amend it. The legislative power of Parliament, therefore, is broader than that of the Congress of the United States, and, as a consequence, the province of the British courts is narrower than that of ours.[1]

[1] Yeaman's *Study of Government*, Chap. vii.

The French Courts, like the British, lack this power of overruling the work of the legislature. The French Constitution is like a body of principles which the French Parliament is bound to respect, but with no provision for judicially annulling any acts by which the Parliament violates these principles.

Power of the Courts Judicial, not Political.—It has been already said that the powers of the courts are *judicial*, not *political*. Thus, if there were two contending parties, each claiming to be the rightful government of France, for instance, the question would not be left to the judiciary. So if there should be a contest between two parties in a State, each claiming to be the legitimate government, the question would be a political and not a judicial one. The Supreme Court has itself decided that certain questions were political, and therefore did not come within its jurisdiction. The judiciary can not prescribe a policy for the government of the country. That must be left to the other departments. The judicial department can not restrain the others in their action, though the acts of both, when performed, are in proper cases subject to its cognizance.[1]

A court's proper function is that of adjudication of rights between individuals as individuals, not as candidates for office or parties to a political dispute. It can not correct an error or fraud on the part of an executive officer in counting votes or otherwise conducting an election. In the exercise, however, of the extraordinary power of annulling an act of the legislative department when in conflict with the Constitution, it can declare void any act of an executive who acts by authority of a law which the court decides to be unconstitutional. There is danger, in times of high political excitement, that one department may encroach upon another; but no government, save an absolute despotism, could be framed in which this liability would not exist. We have a right to assume that each department of the government will honestly and in good faith confine itself to the duties which by the Constitution have been assigned to it.

The Courts and Congress.—Apprehension is sometimes expressed lest the Supreme Court, by deciding acts of Congress

[1] 4 Wallace, 500.

to be unconstitutional, may obstruct the work of legislation and block the wheels of government. But it must be remembered that each of the three great departments of the government is clothed with great power, and each may do incalculable mischief, if so disposed; yet the history of the nation does not show that this power has been so used to any considerable extent. In general, the national courts have been extremely cautious in regard to interference with the laws of Congress.

"It is an axiom in our jurisprudence," said Judge Swayne (United States *vs.* Rhodes and others), "that an act of Congress is not to be pronounced unconstitutional unless the defect of power to pass it is so clear as to admit of no doubt. Every doubt is to be resolved in favor of the validity of the law. Since the organization of the Supreme Court but three[1] acts of Congress have been pronounced void for unconstitutionality."

Laws Declared Unconstitutional.—The first instance was in 1801, at the beginning of Mr. Jefferson's administration. Near the close of the administration of Mr. Adams, a person was appointed to office, and his commission made out but not delivered. Mr. Jefferson withheld the commission. Application was made to the Supreme Court for a writ of *mandamus* to compel Mr. Madison, the Secretary of State, to deliver it, the judiciary act of 1789 authorizing the Supreme Court to issue such writs. But the court, while it held that to withhold the commission was an act not warranted by law and violative of a vested legal right, decided that clause of the act of 1789 to be unconstitutional, as it gave the court original jurisdiction where the Constitution had not given it.[2]

Dred Scott Case.—The second instance was in the celebrated Dred Scott case in Mr. Buchanan's administration, in 1857. The court decided that the eighth section of the act

[1] Since this opinion was written there have been other cases.

[2] 1 Cranch, 137, Marbury *vs.* Madison.

of Congress of 1820, preparatory to the admission of Missouri into the Union, commonly called the "Missouri Compromise," was unconstitutional. This section prohibited slavery in that part of the Louisiana territory lying north of thirty-six degrees thirty minutes north latitude, and not included in the State of Missouri.[1] (It was claimed by the minority of the court at the time, and by other judges of the same court since, that this question was not before the court, and therefore that what was said in regard to it was no more binding than the views of the minority.)

Case of Garland.—The third case was that of Garland, of Arkansas, which was tried in the winter of 1866–67. Congress had enacted (act of July, 1862, amended by that of January, 1865) that all officers of the United States, including attorneys practicing in United States courts, should take a test oath. The Supreme Court decided that this act was unconstitutional as to attorneys of the Supreme Court who were such before the civil war, as being a bill of attainder and an *ex post facto* law.[2]

The last two decisions were made in times of high political excitement, and were severely commented upon by lawyers; the dissenting judges also gave their reasons for believing the laws in question to be strictly constitutional. Some other cases have occurred more recently, but they are comparatively unimportant, with the exception of the decision on the income tax law of 1894, which is explained on page 83.

The fact that, in a period of more than fourscore years, Congress enacted but three laws which, in the judgment of the Supreme Court, contained anything conflicting with the Constitution, is a proof of the care and caution of Congress on the one hand, and, on the other, of the disposition of the judiciary to avoid all encroachment upon the legislative department of the government.

[1] 19 Howard, 393, Scott *vs.* Sandford.
[2] 4 Wallace, 334, *Ex parte* Garland.

Clause 3.—*The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.*

Trial by Jury.—A trial by jury is in the United States a trial by twelve men, impartially selected, who must all concur in the guilt of the person accused before he can be convicted. This refers to United States courts, not State courts. If State constitutions do not prevent it, States may pass laws for a jury of a different number than twelve or provide that a majority or other number may render a verdict.

This right of trial by jury has long been regarded as one of the bulwarks of liberty.

In the celebrated Magna Charta, granted by King John at Runnymede, June 15th, 1215, is the following article: "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways injured; nor will we pass upon him, nor send upon him, unless by the legal judgment of his peers, or by the law of the land." "Nor will we pass upon him, nor send upon him" (nec super eum ibimus, nec super eum mittemus), is interpreted to mean that no man should be condemned (without trial by his peers) either in the Court of the King's Bench, where the king is supposed always to be present and to render judgment in his own person, or before any judge whom the king may delegate to try him.[1]

The word *peers* means equals, and has reference to the different classes or orders of men in a country like England. Another article of Magna Charta says: "Earls and barons shall not be amerced but by their peers." A man must be tried by a jury composed of those who are of the same rank or standing with him. In the United States, as we have no orders of nobility, the trial is by a jury of impartial men.

[1] Bowen's *Constitution of England and America*, page 11.

Most of the cases that come before the Supreme Court, and many of those before the lower courts, are decided by the court; there is no jury. But the Judiciary Act of 1789, and later acts of Congress, provide that issues of fact, in the District Courts, in all causes except equity suits and civil causes of admiralty and maritime jurisdiction, shall be by jury. And the Constitution requires that the trial of *all criminal* cases, before any United States court, shall be by jury. Cases of impeachment are tried by the Senate, as we have seen, and of course there is no jury in such cases.

Place of Trial.—The trial must take place in the State where the crimes were committed. This is a provision in favor of the accused. He is made to suffer as little inconvenience as possible. Offences "not committed in any State" are those in the District of Columbia; in the Territories; in the forts and arsenals of the United States; and upon the high seas. Provision is made by law for all these; those committed upon the high seas are tried in the State where the vessel first arrives.[1]

Unanimity of the Jury.—With us there is no conviction unless the jury are unanimous. "The unanimity required in the verdicts of English and American juries was not originally required among the people with whom the institution had its origin; the verdict being reckoned by a majority, except among the Normans after they went to that province of France which has since borne their name. . . . In Sweden the jury exists to-day as it has existed for many centuries. A verdict is given by one half the jury, or any greater proportion, and the judge; or by a unanimous jury against the opinion of the judge; there being no verdict when the majority are opposed by a minority and the judge.

"We could now well consider whether absolute unanimity may not safely be dispensed with; whether the jury is not less a necessity in a perfectly free community of equals than in one composed of the three orders; whether its functions, in the progress of our political growth, have not been in great part or entirely performed, so that in the future it is to be simply a preservative and safeguard instead of a forming and guiding influence—a conservative rather than a progressive force, and therefore whether we may not well limit its application to penal, criminal, and

[1] Paschal's *Annotated Constitution*, page 211.

political causes and actions arising in tort or sounding in damages; leaving all matters of account, contract, title, and estates entirely to the court, without the intervention of a jury. Such, at least, seems to be the tendency of the professional judgment of the country." [1]

We may consider here some constitutional amendments which relate to the subject of the judiciary.

Amendment 5.—*No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

Grand Jury.—There are two juries, the grand jury and the petit jury; the latter being meant when the word *jury* is used without any qualifying term. The grand jury is composed of a number of men, not less than twelve nor more than twenty-three, selected as prescribed by law. In the national courts, after the grand jury have been impaneled, the judge delivers his charge to them, directing them to make careful inquiry of all offenses committed within the district against the laws of the nation, and to make presentment of the same.

Presentment and Indictment.—A *presentment* is an accusation made by the grand jury from their own observation or knowledge, or from evidence before them. An *indictment* is a formal accusation drawn up by the proper officer—in the United States courts the district attorney—charging offenses upon certain parties. It is the duty of the grand jury to

[1] Yeaman, Chap. xiii.

examine the grounds of this accusation. If the evidence seems to them insufficient to warrant a trial of the party accused, they indorse upon the bill of indictment "not a true bill," or "not found," and the prisoner is released. But if they regard the accusation as well founded, they indorse upon the indictment the words "a true bill." In this case they are said to *find* the indictment, and the person accused must be brought to trial. A presentment may lead to an indictment or it may not. Sometimes it is a mode taken by the grand jury to call public attention to certain acts which are thought worthy of reprehension. Though the Constitution says no person can be tried unless on a presentment *or* indictment, no person is in fact brought to trial except on indictment. Congress has never authorized trials on presentment.

Second Trial.—No person may be subject to a second trial for the same offense. That is, when by the verdict of a jury a man has been regularly acquitted or convicted of the offense charged, and judgment has been pronounced, he can not be tried for that offense a second time. But if the jury could not agree, or were discharged before a verdict was rendered, or if judgment was arrested after a verdict, or a new trial granted in his favor, he might be tried again.

Privileges of Accused Persons.—No person may be compelled to testify against himself, or be deprived of life, liberty, or property, without due process of law. In former times criminals were compelled, and in some countries are now, to be witnesses against themselves, and even torture is used to wring from them a confession of guilt. Though the protection to the citizen specified in this amendment was among the common-law privileges, it is inserted here for additional security.

Private Property shall not be taken for public use without just compensation. It is necessary for the government sometimes to take possession of private property for public pur-

poses. A road is to be made, or a street to be opened, for example. In some cases the property is purchased beforehand ; but if a price can not be agreed on, or the owner will not sell, the property is *condemned,* and a jury are summoned to assess the damages. They may not place as high an estimate on it as the owner does, but this is a liability to which all are subject alike.

The power of the government to take private property in this manner is called eminent domain. All kinds of private property, chattel as well as real, can thus be taken. Property includes intangible rights and franchises as well as land. The compensation must be paid in *money.* Therefore money can not be taken, except probably in time of war and great public emergency. What is a public use is decided by the courts, but the wisdom or expediency of the taking, and the amount of property to be taken, are matters that lie within the province of the legislature. Highways are public and that term includes canals and railroads. Burying grounds are not public uses, but parks are. Waterworks and water pipe lines, natural and artificial gas pipe lines are public uses. The drainage of a large tract of swamp land and the securing of water power for mills and public buildings are public uses for which private land may be taken. The power belongs to the government, but the government can delegate its exercise to a corporation created for the purpose of carrying out the public use. This is usually done.

Amendment 6.—*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

Right to Impartial Trial.—All but the last two of these provisions were a part of the common law of England. But, until a period comparatively recent, the accused was not in that country allowed in capital cases to have the assistance of

counsel, or the right to compel the attendance of witnesses. We can hardly credit the statement, that before the accession of William and Mary, in 1688, a person arraigned for a capital crime was entitled to neither witnesses nor counsel. Yet such was the fact. It was well, therefore, to guard these rights by a provision in the Constitution; thus making sure that in all the land an accused person should be entitled not only to a trial by jury, but to witnesses and counsel as well.

As a matter of practice, the accused is always provided with counsel by the government if he is unable from poverty to employ his own lawyer. This is a liberal application of this clause.

In Time of War.—Amendments 5 and 6 have reference to the civil administration of the government in time of peace. "Whenever from invasion or rebellion the public safety may require the administration of martial authority, criminals may be tried, convicted, and executed, without the intervention of a jury."[1] "The conspirators who assassinated the President of the United States while the country was in a state of war and while the city of Washington was under martial law, were triable by military commission under the act of Congress, and not entitled to a trial by jury."[2] "The Constitution contemplates the possibility of a state of public danger arising from the presence of a foreign or domestic foe. . . It contemplates the necessary suspension for the time being, and in particular localities, of the civil functions of the government, that the martial powers of the same may be efficiently exercised for the security and welfare of the nation."[3]

Amendment 7.—*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.*

The phrase "common law" is used in contradistinction from equity, admiralty, and maritime jurisprudence. It is the common law of England, the *lex non scripta*, the immemorial customs of the country. Article III., Section 2, Clause 2, gives to the Supreme Court appellate jurisdiction both

[1] Tiffany, page 366. [2] Paschal, page 264. [3] Tiffany, page 259.

as to *law and fact*. "The real object of that provision was to retain the power of reviewing the fact as well as the law, in cases of equity, and admiralty and maritime jurisprudence." But as it was thought by some to authorize the Supreme Court to review the decision of a jury in mere matters of fact, and thus reduce to a form the right of trial by jury in civil cases, this amendment was proposed to remove the misapprehension. The rules of common law recognized but two modes of reëxamining facts tried by jury; first, the granting a new trial by the court before which the issue was tried; and, secondly, by a writ of error. A *writ of error* removes nothing for reëxamination but the *law*. An *appeal* would remove the cause entirely, subjecting the fact as well as the law to review and a re-trial. But an appeal is a process of civil law origin and not of common law.

Sec. 3, Clause 1.—*Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.*

Treason is the highest crime known to society, because it tends to the destruction of the government itself. A traitor is always regarded as meriting the severest punishment that society can inflict. As treason is a breach of allegiance, it can be committed by one only against the government to which he owes allegiance. Most governments have made the word treason include many offenses which were not strictly treasonable, and thus sometimes persons have been put to death for crimes for which some milder punishment would have been sufficient. As the word implies a breach of faith, it was *petit* treason for a wife to kill her husband, or for a servant to kill his master. The act was more than murder; it was a kind of treason. For a subject to attempt to take the life of the king or queen, or to levy war against the king, or to adhere to his enemies, was *high* treason.

Constructive Treason.—When a tyrannical king was on the throne, his judges would often declare offenses to be treason

which the people never suspected to be treasonable. This was called *constructive* treason. To prevent this, a statute was enacted in England in the time of Edward III., which defined the term. This statute comprehended the various kinds of treason under seven heads. The third of these was, levying war against the king in his realms; and the fourth was, adhering to the king's enemies in his realm, and giving them aid and comfort in his realm or elsewhere.

Definition of Treason.—Our Constitution takes a part of this statute of Edward III. for its definition of treason. It is made to consist only in levying war against the nation, or in adhering to its enemies, giving them aid and comfort. The purpose was to make the meaning as definite as possible, that all opportunity for constructive treason might be removed. Mr. Madison thought the definition was too restricted, and that more latitude ought to be left to the discretion of Congress. But the Convention preferred to place the definition in the Constitution itself, and not to leave it to the judgment of Congress.

It has been decided by the court that there must be an actual levying of war; that a conspiracy to subvert the government by force is not treason. But after war has been commenced, men may give aid and comfort to the enemy although they may not actually bear arms. The language of the court is: If war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors.[1]

Case in the Civil War.—While the Constitution thus makes the offense of treason to embrace the giving aid and comfort to the enemies of the country, opinions may differ in regard to what constitutes "aid and comfort." During the civil war, two steamers belonging to a steamship com-

[1] *Ex parte* Bollman, 4 Cranch, 126.

pany had been seized for the Confederate service. Subsequently payment was offered for them to the agent of the company, when he was informed by the government that acceptance of payment from the Confederates would be treated as an act of treason against the United States. Said Mr. Seward, Secretary of State: "It is treason for any person to give aid and comfort to public enemies. To sell vessels to them which it is their purpose to use as ships of war, is to give them aid and comfort. To receive money from them in payment for vessels which they have seized for those purposes, would be to attempt to convert the unlawful seizure into a sale, and would subject the party so offending to the pains and penalties of treason, and the government would not hesitate to bring the offender to punishment." [1]

In times of rebellion or civil war, all persons need to exercise great caution in regard to their conduct and language, lest they subject themselves to the charge of giving aid and comfort to the enemies of their country. Actions and words which in other circumstances would pass unnoticed may be productive of great mischief when the life of the nation is endangered. All good citizens will, therefore, at such times studiously refrain from whatever might bear an unfavorable construction.

Conviction of treason requires the testimony of two witnesses to the same overt act of treason, or a confession in open court. A private confession passes for nothing.

Aaron Burr, who had been Vice President of the United States, was tried for treason in 1807 and acquitted.

Clause 2.—*The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.*

Punishment of Treason in England.—Had this clause been omitted from the Constitution, Congress would still have had the power to declare what punishment should be inflicted on a traitor. It was inserted, doubtless, to prevent the barbari-

[1] Tiffany, page 283.

ties usually connected with the punishment of treason, and to limit the effects of attainder. According to the English theory, the judgment itself pronounced upon one who had been convicted of treason involved certain consequences in the mode of his execution as well as in regard to his estate. The offender was put to death in a cruel manner. His bowels were taken out while he was yet alive, and burned in his presence. His head was cut off and his body divided into quarters.

The judgment also involved *attainder*, which *worked* corruption of blood or forfeiture. There was no judgment of attainder, but the attainder followed the judgment as a matter of course. And this attainder included corruption of blood or forfeiture as a natural consequence. All his property, of every description, was forfeited. And not only so, his children could not inherit through him from his ancestors. All inheritable qualities were destroyed by corruption of blood. In a country where real estate was entailed, the children were thus made to suffer for the offense of the parent. If the property of the traitor himself were confiscated to the government, there would be no hardship to the children, for the heirs have no right to the estate while the ancestor lives. But if the blood is corrupted so as to cut off the connection between children of the traitor and his ancestors, and prevent any inheritance descending to the former from the latter after his death, the children would suffer.

Punishment Mitigated by the Constitution.—Our Constitution mitigates the severity of this punishment. It provides that the offender himself shall bear all the punishment. There shall be no corruption of blood except during the life of the party attainted. As Mr. Madison says, "The Convention have restrained Congress from extending the consequences of guilt beyond the person of its author."[1] If there should be any attainder in the punishment of treason, it must

[1] Federalist, No. 43.

not be allowed to work corruption of blood after the death of the traitor. The corruption of blood must then cease, and there can be no new forfeiture. It does not mean, as some have supposed, that if the property of the traitor has been confiscated it must be restored to his heirs at his death. This would involve the absurdity of forbidding the taking away, except for the short period between sentence and execution, the property of one who had been guilty of the highest offense known to society, while minor offenses are often punished with heavy fines.

The *attainder* spoken of in this clause must be that connected with the judgment pronounced by a court, and not a legislative attainder. For we have already seen that Congress is forbidden, as also the States, from passing any bill of attainder. Congress might provide for a judicial attainder in the case of treason, but the effects of this attainder must be limited to the life of the offender.

Forfeiture Misunderstood.—By act of April, 1790, Congress provided that treason should be punished with death by hanging. In 1862 (July 17th) an act of Congress declared that the traitor should suffer death and his slaves should be made free; or, at the discretion of the court, he should be imprisoned for not less than five years, and fined not less than ten thousand dollars, and all his slaves be made free, the fine to be levied on any of his property, real or personal, excluding slaves. This act was accompanied by a joint resolution, providing that no punishment under the act should be so construed as to work a forfeiture of real estate of the offender beyond his natural life. This resolution was passed because the President regarded the clause of the Constitution now under consideration as forbidding the forfeiture of real property except during the life of the offender.

The act of 1790, referred to above, provides for punishing a variety of offenses besides treason. Some of these were to be punished with death, but most of them with fine and im-

prisonment, the fines ranging from one hundred to five thousand dollars. Section 24 of the act provides that "no conviction or judgment for any of the offenses aforesaid shall work corruption of blood or any forfeiture of estate." The language is that no conviction or judgment shall *work any forfeiture of estate.* To interpret it as the President in 1862 interpreted the clause of the Constitution relating to the punishment of treason would be to make it contradict the other sections of the same act, which prescribe punishments by fines, *i. e.*, by the forfeiture of estate.

The meaning of the act of 1790 is obviously this: The offenses mentioned are to be punished, some with death, some with fines and imprisonment; but no conviction or judgment, *as such, or by its own force,* is to work corruption of blood or any forfeiture. The offender must give up so much of his estate as is needed to pay the fine imposed; but, that being done, there is to be no loss of additional property, in the way of forfeiture, as a consequence of conviction or judgment. Had Congress made the punishment of treason to be death and the absolute forfeiture of all the estate of the traitor, they would not have gone beyond the authority conferred on them by the Constitution. They preferred not to go to the limit assigned them. They enacted that attainder of treason should not work *any* corruption of blood or forfeiture. But at the same time they made an absolute confiscation of property for offenses much less heinous than treason.[1]

No Treason against a State.—As treason is a crime against sovereignty, a violation of one's allegiance, there can be no treason against a particular State.[2] If a State, by its courts, punishes treason, it must be not as treason against itself, but as treason against the Union; and in this view the propriety of that State legislation which affixes to it particular penalties is doubtful.[3]

[1] For views similar to those here advocated, see Story, Duer, Farrar, Tiffany, Mansfield, and others. For the opposite view, see Yeaman, Appendix.

[2] Elliott, V., page 449. [3] Jameson, page 56.

ARTICLE IV.

Section 1.—*Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

"Full faith and credit" means that credit which the State itself gives to the acts, etc., when proved.

"The public acts" are the legislative acts, the enacted laws of a State.

"Records" are the registration of deeds, of wills, legislative journals, etc.

"Judicial proceedings" are the proceedings, judgments, orders, etc., of courts.

Whenever the laws and acts of one nation come into examination in any forensic controversy in another nation, they must be proved like other facts. The Constitution provides that this shall not be necessary as between the different States of the Union; that the judgments, etc., of one State need not be reëxamined in another. But the manner in which the acts and judgments shall be authenticated, and what their effect shall be, is to be left for Congress to declare.

In 1790 and 1804 Congress enacted that the acts of the legislature of a State or Territory should be authenticated by its seal; and that the records of a court should be proved by the attestation of the clerk and the seal of the court annexed (if there be a seal), with the certificate of the judge. It was provided, also, that the records thus authenticated should have such faith and credit in every other court in the United States as they have in the courts of the State from which they are taken.

Sec. 2, Clause 1.—*The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.*

Who are Citizens ?—Though the word *citizen* is repeatedly used in the Constitution, it is nowhere defined in the original instrument. But the Fourteenth Amendment says, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Prior to the abolition of slavery, only *free* inhabitants born in the United States, or naturalized under the laws of Congress, would have been considered citizens. Every citizen of the United States is a citizen of the State where he resides. One may be a citizen of the United States and not a citizen of any particular State, because his residence may be not in a State, but in a Territory or in the District of Columbia. But whenever a citizen of the United States becomes a resident of a State, he becomes a citizen of it also.

A Citizen's Rights in Another State.—This clause of the Constitution provides that a citizen of one State, on removing to another, shall enjoy all the rights and privileges of the citizens of that State. But he can not claim any which were peculiar to the State he has left. He can not carry the local laws of one State with him when he removes to another.

This clause also provides that the person and property of a citizen of one State shall be secure in every other State. No other part of the Constitution has been so frequently or flagrantly violated as this. Indeed, until 1866 no law had been enacted by Congress for carrying its provisions into effect. Early in that year a bill was passed, entitled "An Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication." It was vetoed by President Johnson, but receiving the requisite two thirds vote of each house, became a law April 6th, 1866. It is known as the Civil Rights Bill.

It declares that all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are citizens of the United States ; and all such citizens, of every race and color, without regard to

any previous condition of slavery or involuntary servitude, shall have the same right, in every State or Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property; and to full and equal benefit of all laws and proceedings for the security of person and property.

Dred Scott Case. — This act of Congress is, obviously enough, in conflict with the language of Judge Taney in the Dred Scott case, that "a free negro of the African race whose ancestors were brought to this country and sold as slaves, is not a citizen in the meaning of the Constitution." But it has been maintained by other members of the Supreme Court that this point was not before the court; and therefore the language above quoted is not to be regarded as the decision of that body.

The study of our governmental history shows that the emancipation of a slave was exactly equivalent to the naturalization of an alien or foreigner. As naturalization removed the disqualification of the alien, so emancipation removed that of the slave. This was the decision of the supreme court of North Carolina, in 1836, as delivered by Judge Gaston, and it was reaffirmed by the same court in 1848.

That the language of Judge Taney, to the effect that "free negroes were not regarded in any State as citizens at the time of the Declaration of Independence and the formation of the Constitution," is not in accordance with the teachings of history, two facts will suffice to show. At the time of the ratification of the Articles of Confederation, all free, native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors on equal terms with other citizens.[1] The other fact is this. On the 25th day of June, 1778, when the Articles of Confederation were under discussion in Congress, a motion was made that the word "white" should be inserted between the words "free" and "inhabitants" in the fourth article. Two States voted for the amendment, eight voted against it, and the vote of

[1] Judge Curtis, in Scott *vs.* Sandford.

one State was divided.[1] This fourth article corresponds to the clause of the Constitution which we are now considering. It reads, in part: "The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States."

Clause 2.—*A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.*

Fugitives from Justice.—A State has no authority beyond its own limits. If a criminal should escape from one State to another, the former could not arrest him, because he is beyond her boundaries, and the latter could not punish him for offenses committed beyond her jurisdiction. It was necessary that a power whose authority extended over the whole country should make provision for the arrest and punishment of fugitives from justice.

Before any law had been enacted by Congress to carry into effect this clause of the Constitution, the governor of Pennsylvania made a requisition upon the governor of Virginia to deliver up an escaping criminal. The requisition was refused by the latter on the ground that the clause gave him no authority to deliver up the fugitive. The case was referred by the governor of Pennsylvania to the President, and by him laid before Congress. In consequence, the act of 1793 was enacted. This act provides that the demand be made on the executive authority of the State to which the fugitive has fled. Accompanying the demand should be a copy of the indictment found, or an affidavit made before a magistrate, and certified as authentic by the governor making the demand. The arrest is then made by the order of the governor of the State to which the criminal has fled, and the fugitive is de-

[1] Jour. Cont. Cong., IV., 272.

livered to the agent of the former. All the expenses must be paid by the State from which the escape was made. The act applies to the Territories as well as to the States.

A fugitive from justice may be arrested and detained prior to the demand by the governor. The executive upon whom the demand is made can not go behind the demand and accompanying charge of the governor demanding, to determine whether, by the laws of his own State, the offense charged is a crime.

Extradition.—The giving up by one *nation* of a fugitive from justice escaping from another nation, is called *extradition.* No nation can demand of another the surrender of a criminal except in consequence of express treaty stipulations. Such treaties now exist between the United States and almost all other civilized nations.

Clause 3.—*No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

Fugitives from Labor.—The act of February 12th, 1793, was passed to carry into effect this clause as well as the preceding one. A "person held to service or labor" might be a slave or an apprentice. This clause, and that part of the act of Congress relating to fugitives from labor, had special reference to slaves, though the word *slave* does not occur in the Constitution. The law of 1793 was amended in 1850, and made still more objectionable to the friends of freedom. The commissioners before whom alleged fugitives were to be taken might order any citizens to assist in returning fugitive slaves; and any person hindering such return could be fined one thousand dollars and imprisoned six months, and might forfeit, in addition, one thousand dollars to the owner for each fugitive so lost. The commissioner was to have a fee of five

dollars if the fugitive was not returned to the claimant, and ten dollars if he was returned. The harsh features of this law of 1850, with the repeal of the Missouri Compromise, and the Dred Scott decision, had much to do in directing public attention to the evils of slavery, and in preparing the people to meet the conflict of 1861.

Thirteenth Amendment.—The law of 1850, and those sections of the law of 1793 which related to fugitive slaves, were repealed June 20th, 1864. On the 1st of February, 1865, Congress proposed an amendment to the Constitution, abolishing slavery throughout the United States. On the 18th of December, of the same year, this was declared to have been ratified by the legislatures of three fourths of the States. It is the Thirteenth Amendment.. Thus was the question of slavery at last settled—a question which has caused more disturbance in our government than all other questions combined.

Sec. 3, Clause 1.—*New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.*

Clause 2.—*The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.*

New States before the Constitution. — The articles of Confederation made no general provision for the admission of new States. Canada might come into the Union on acceding to the Articles of Confederation and joining in the measures of the United States; but no other colony could

be admitted unless by the agreement of nine States. Vermont declared herself independent in 1777, and made application for admission; but the application was not granted, as Congress was unwilling to offend the States of New York and New Hampshire, both of which claimed it as within their jurisdiction, and opposed its admission into the Union.[1]

Thirty-five Admitted.—From the adoption of the Constitution to the year 1913 thirty-five new States were admitted: the first, Vermont, in 1791; the last, Arizona, in 1912. No State has been formed by the junction of two or more States, or parts of States, while four have been created within the jurisdiction of other States: Vermont from New York (claimed also by New Hampshire), Kentucky from Virginia, Maine from Massachusetts, and West Virginia from Virginia.

The language of the Constitution is, new States *may* be admitted into the Union. It is not imperative upon Congress to admit them. Nor can Congress *compel* the people of a Territory to become a State. For obvious reasons, however, statehood has been regarded as desirable, and as such has been eagerly sought by the Territories.

Claims to the Unsettled Territory.—After the colonies threw off the yoke of Great Britain, the unsettled territory within the limits of the United States became a subject of grave concern. Some of the States claimed that those lands were within their chartered limits, and that to them belonged both soil and jurisdiction. Others insisted that, as the war had been carried on under a common government, and for the common interest, this territory should be considered as the common property of the nation.

Action of Congress.—On the 6th of September, 1780, Congress pressed upon the States having claims to the western country, a surrender of a portion of their territorial claims, as they could not be preserved entire without endangering the stability of the general Confederacy. A month later (Oc-

[1] Pitkin, II., page 314.

tober 10th) Congress resolved that the unappropriated lands that might be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress of September 6th, should be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States.

Cessions by the States.—In accordance with this recommendation, cessions were made by different States, as follows: New York, March 1st, 1781; Virginia, March 1st, 1784; Massachusetts, April 19th, 1785; Connecticut, September 14th, 1786; South Carolina, August 9th, 1787. These were made before the formation of the Constitution. North Carolina and Georgia had not relinquished their claims when that instrument was adopted, but they did so afterward: North Carolina, February 25th, 1790, and Georgia, April 24th, 1802. The language of Clause 2, that the claims of any particular State should not be prejudiced, had reference to the claims of the last two States named above.

Power of Congress over the Territory.—The Constitution confers on Congress full power to make laws respecting the territory belonging to the nation and not yet formed into States. Without a specific grant to that effect in the Constitution, Congress would doubtless have had this power. The first law, indeed, organizing a Territory, was enacted before the Constitution was adopted—the Ordinance for the Government of the Territory of the United States North-west of the River Ohio, July 13th, 1787.

The Ordinance of 1787.—As early as April, 1784, after the cessions by New York and Virginia of their claims, the Continental Congress passed a resolution providing a plan of temporary government for the western territory. There was, however, no organization of government under this act, though it remained on the statute book till repealed by the Ordinance of 1787. This celebrated ordinance, regarded, after the Declaration of Independence, as the most important act

of the Continental Congress, and eulogized in the highest terms by Webster, Chase, Bancroft, and others, was enacted with immediate reference to a colony which General Rufus Putnam and his associates of the Revolutionary Army proposed to plant in the valley of the Ohio. Their proposal to purchase of Congress a million and a half of acres and form a settlement, was followed immediately by the passage of this ordinance. It was drawn in accordance with their ideas of a suitable government, and some of its most important features were undoubtedly the suggestions of the Rev. Manasseh Cutler, who negotiated the purchase for the company, of which he was one of the directors.[1]

Acquisition of Territory.—The framers of the Constitution introduced these two clauses of Section 3 into the Constitution, that the resolution of Congress, of the 10th of October, 1780, might be carried into effect; and they had primary reference to the territory then claimed by different States. But the language is broad enough to cover whatever territory the United States might subsequently acquire. The Constitution nowhere in express terms authorizes the general government to enlarge the national domain by purchase, by conquest, by annexation, or in any other mode; but this is one of the powers incident to national sovereignty, and as such it has been repeatedly exercised by the United States, though the matter has been the subject of dispute. Louisiana was purchased under the administration of Mr. Jefferson; Florida, under that of Mr. Monroe; Texas was annexed under the presidency of Mr. Tyler; and the territory which was obtained from Mexico was conquered under Mr. Polk. All these gentlemen were in theory strenuous advocates of the doctrine that our general government is one of limited and enumerated powers.

The constitutionality of the acquisition of territory was again questioned at the close of the war with Spain, in 1898,

[1] The Ordinance of 1787 may be found in the Appendix.

in regard to Porto Rico and the Philippine Archipelago. By the treaty of Paris, ratified in 1899, these islands were ceded to the United States, which in turn paid twenty million dollars to Spain. Many opposed this action as unconstitutional, holding that even the Louisiana and Texas precedents did not sustain the acquisition of territory thousands of miles from our shores. The Hawaiian Islands had been annexed a few months previous, despite strenuous opposition which had persisted for several years previously. As no war attended the Hawaiian revolution, and as the Hawaiian Republic sought annexation to the United States, the issue was not so pointed as in the case of the Philippine Islands. Questions like these are settled by the march of history rather than by the logic of jurists.

Ordinance of 1787 Continued. — There is no doubt that the United States, like other nations, can acquire territory and govern it. Though the Articles of Confederation said nothing about the government of territory, Congress exercised this power, as we have seen, and passed the celebrated Ordinance of 1787, while the Convention that framed the Constitution was in session. After the Constitution was adopted, Congress did not deem it necessary to reënact that ordinance, but merely *adapted* it to the new Constitution, by providing that the territorial officers who, before, were appointed by Congress, should now be appointed by the President and Senate, and should report to the President instead of to Congress. This act, which was passed August 7th, 1789, shows that the members of that first Congress under the Constitution regarded the ordinance as still binding.

This ordinance, for the government of the Northwest Territory, was for a long period the model after which other Territories were organized. If the Territory was in the South, that clause of the ordinance which prohibited slavery was excepted ; if the Territory was in the North, the government was to be in all respects similar to that provided by the Ordinance of 1787.

Power as to Slavery in the Territories.—Including the act of August 7th, 1789, eight separate acts were passed, extending through a period of over sixty years, each one pro-

hibiting slavery in the Territory organized. The power of the general government to make *all* needful rules and regulations for the government of the Territories was not called in question till the winter of 1856–57, on the trial of the Dred Scott case. In giving the decision of the court in that case, Judge Taney said, among other things which referred to matters not before the court, that Congress had no power to prohibit slavery in a Territory of the United States. Even if that question had been before the court, being a *political* question and not a *judicial* one, it was one over which that department of the government had no control.

In the same opinion the court held that "the propriety of admitting a new State into the Union is committed to the sound discretion of Congress, and that the power to acquire territory must rest upon the same discretion." The power to govern a territory was not inferred, however, from the clause of the Constitution now under consideration, but was regarded as the inevitable consequence of the right to acquire territory, which last right, as there is no allusion to it in the Constitution, must be a right of general sovereignty. Mr. Douglas held that the power of Congress to govern the Territories was to be found in the clause authorizing the admission of new States; if States may be admitted into the Union, Territories may be governed so as to fit them to become States.[1] It is admitted, then, by all that Congress has the exclusive right to govern the Territories.[2]

Territorial Government.—As soon as new territory is acquired by the United States, the right of sovereignty is vested in the nation. The authority of the nation over such territory is absolute, except as modified by the treaty with the nation from which it was obtained. The people of the territory

[1] Report on Kansas.

[2] The constitution of the Confederate States provided for the acquisition of new territory, and its government by Congress. But slavery was recognized and protected, and the inhabitants of other States and Territories might take their slaves into every Territory. That constitution provided that other States might be admitted into the Confederacy by a vote of two thirds of the whole House of Representatives, and two thirds of the Senate—the Senate voting by States. (McPherson's *History of the Rebellion*, 1860–65, page 99.)

have no governmental power except as granted by Congress. Whenever Congress sees fit it may organize a territorial government. Such a government usually consists of a legislature chosen by the people, a governor appointed by the President and Senate, and judges appointed in the same manner. But the territorial authority, whether legislative, executive, or judicial, derives its sanction from the sovereignty of the nation.

The Status of the Residents in a Territory.—According to our governmental system the people of a Territory, while they have civil rights and are entitled to protection, have no power to govern the Territory—that is, to govern themselves—save as it is given them by the general government; and they can not in any way participate in the general authority of the nation. But whenever a Territory is admitted into the Union by Congress it becomes a State, and as such its people are authorized under the Constitution to manage their local affairs, and to participate in the administration of the nation. When a citizen of a State goes to reside in a Territory, he leaves behind him most of his political privileges, though not his civil rights. He has no longer any voice in the election of President or of a member of Congress. He can not take part in electing a governor of the Territory.

Relation of a Territory to the Union.—A Territory is a part of the domain of the United States; it is a part of the United States considered as the name of the country, but it is not *in the Union* in the sense in which a State is. Nor can it come into the Union except as it is admitted by Congress. It may frame a State constitution, which its people may ratify; but that does not constitute it a State. The consent of Congress is indispensable to enable it to become an integral part of the Union. But when admitted, and thus constituted a State, it becomes a political corporation for local purposes, and a part of the great political organization whose sway extends over the whole domain. Our political privi-

leges are thus largely dependent upon our belonging to a State.

The Surrender of Rights by a State.—As a Territory is not compelled to become a State, so a State is not compelled to remain a State. If a State, as a political organization, refuses to consider itself any longer a member of the great national body, and by deliberate act withdraws from the Union, what then? The soil is still a part of the domain of the United States, and the people who dwell upon it are still subject to the nation. They have simply given up their privilege of managing their own local affairs, and all right to participate in the government of the nation. They have no more political authority than the people of a Territory before its admission into the Union, and they can have none till Congress confers it upon them.

Out of the Union, a State not a State.—*There is no such political entity known to our governmental system as a State out of the Union.* The moment the withdrawal takes place, the existence of the State as such ceases. It is no longer a "State." If its people can maintain their independence by the sword, they may frame a government and call it what they please. But whether successful or unsuccessful, it is no longer one of the United States of America. It is no longer a State in the American Union. If it fails to gain its independence, it is not "*in* the Union, but *under* it."[1]

Mode of Admitting States.—There has not been entire uniformity in the mode of admitting new States, but the following is the most usual, and may be considered the regular mode: when a Territory has a sufficient population, a memorial is sent to Congress, asking for leave to form a State constitution, and to be admitted into the Union. Congress then passes an act, called "an enabling act," authorizing the inhabitants to form a constitution. A convention is held for this purpose, and the constitution thus formed is presented

[1] Brownson, Chapter xii.

to Congress for its approval. If the proceedings have been regular, and the constitution is free from objection, Congress passes an act admitting the new State into the Union "on an equal footing with the original States in all respects whatever."

The case of Louisiana may be taken as an example. In March, 1804, the region purchased of France, under the name of Louisiana, was erected by Congress into two Territories—the District of Louisiana and the Territory of Orleans. In February, 1811, an act was passed "to enable the people of the Territory of Orleans to form a Constitution and State government," etc. April 8th, 1812, an act was passed, to take effect April 30th, "for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said State."

Territories not Provinces.—This power to admit new States into the Union, and to make them equal participants with the older States in the government, is "one of the new principles introduced into our system, and is, perhaps, the most anomalous and most influential upon its future destiny. All the nations of antiquity held immense *provinces*, which constituted a part of the state for purposes of revenue and armies, but were never admitted upon terms of *equality*, and whose inhabitants were never *citizens*. The idea of constituting a *government*, to be increased as to the *source of law*—by its own colonization, or by recruits from abroad, is wholly *new*."[1]

Section 4.—*The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence.*

The Guaranty of Republican Government.—This clause makes a republican government necessary in every State. It could not be obligatory upon the United States to guarantee

[1] Mansfield's *Political Manual*, page 192.

it to the individual States, unless it was incumbent on them to have such a government. It is equivalent to saying that "no other shall be permitted to be established."[1] The clause prescribes a republican government for all the States, protection against hostile invasion, and, on request, against domestic violence. Every State must have a republican government, and if at any time a State is destitute of one, the general government is bound to provide it.[2]

This is the only instance in the Constitution where the government has a duty enjoined upon it, while the particular department is not mentioned. Here the obligation is from the United States to the States; but whether to be exercised by the President or by Congress is one of the questions that have grown out of the reconstruction measures.[3] In the case of Rhode Island, the Supreme Court held that "It rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal."[4]

What is Republican Government?—The Constitution does not define a *republican* government. The national government may be assumed to be republican in form, and thus a model for the States. Mr. Madison says: "We may define a republic to be a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior."[5] "The principle of republicanism is the equal right of the people, the citizens, all the members of the body politic. In theory it is the government of public opinion. . . . The fun-

[1] Curtis, II., page 472. [2] Farrar, page 221. [3] Paschal, page 242.
[4] 7 Howard, 42. [5] Federalist, No. 39.

damental principles of right and justice for the government, the representative character of the governors, and their practical responsibleness to the governed, are the essentials of republicanism." [1]

State Constitutions Referred to.—The Constitution indirectly requires various provisions in the State governments by enjoining duties. The senators of the United States are to be elected by the State legislatures. Members of the House of Representatives are to be elected by the same electors as vote for the members of the most numerous branch of the State legislature. The executives of the States are often referred to. The judges are to take an oath to obey the Constitution of the United States. Thus, the States must have the three great departments of government—the legislative, the executive, and the judicial. The legislature must be in two branches, and the most numerous branch must be elected by the people. The States are supposed to have written constitutions (Article VI.).

A State Entitled to Protection.—It would have been the duty of the United States to protect each State against invasion and domestic violence had not this special provision been inserted, for one of the ends for which the Constitution was ordained was to provide for the common defense. In the Convention that framed the Constitution, "Mr. Rutledge thought it unnecessary to insert any guaranty. No doubt could be entertained but that Congress had the authority, if they had the means, to coöperate with any State in subduing a rebellion. It was and would be involved in the nature of the thing." [2]

"It may well be doubted if any dereliction of duty on the part of the officers of the State, whether legislative or executive, could afford an adequate excuse for the general government in suffering the regular administration of the authorized republican government of a State to be overthrown and destroyed, or otherwise substantially interfered with by domestic violence, under circumstances that obviously required their authoritative interposition for the preservation of the peace and good order of the community." [3]

What is said on pages 197, 198 concerning the Chicago riots may be

[1] Farrar, page 223. [2] Elliot, V., page 333. [3] Farrar, page 229.

referred to here. It may be said that at Chicago the national forces were not employed to protect the State of Illinois, but the United States. There is no question of this distinction.

Eleven States Secede in 1860 and 1861.—The clause of the Constitution now under consideration was brought prominently into notice in the secession and subsequent reconstruction of eleven States of the Union. In the six months commencing with December, 1860, ordinances of secession, so called, were passed by conventions in South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Arkansas, Virginia, Tennessee, and North Carolina. These conventions were entirely revolutionary, and depended for their justification upon success. But success was not theirs. Their armies were defeated after an immense expenditure of blood and treasure. The doctrine of the right of secession, or, which is the same thing, of absolute State sovereignty, which they had determined to submit to the arbitrament of the sword, had been proved to be utterly untenable, and their States had been placed in positions entirely abnormal.

Their Anomalous Condition.—"Here, then, were brought again into relations of practical subjection to the Union certain integral populations, which had once been Constitutional States, but which, having by truancy from Constitutional courses lost something necessary to that character, were such no longer—were, indeed, little more than 'geographical denominations'; communities which, although as much in the Union, territorially, as ever, were properly neither Constitutional States nor Constitutional Territories, but States which had, *sua sponte*, for purposes of ambition, divested themselves of their Constitutional apparel and donned that of treason and rebellion, and so had forfeited their prerogative as States to participate in governing the Union, and been relegated to a condition analogous to that of Territories—a condition in which they belonged to the Union, but had rightly no governing function whatever, local or general."[1]

Reconstruction in Virginia and in Missouri.—The work of reconstruction had commenced in some of the States before

[1] Jameson, page 244.

the close of the war. A large majority of the legislature of Virginia adhered to the Confederacy, but Congress recognized as the lawful legislature a minority which assembled at Wheeling. This body sent senators to Congress, and gave consent to the formation of the new State of West Virginia. In Missouri the governor and the majority of the legislature adhered to the Confederacy, and passed an ordinance of secession. The State was admitted as a member of the "Confederate States," and continued to be represented in the Confederate Congress till the overthrow of the Confederacy. But a convention, which had been called by the legislature of Missouri in 1860, having refused to pass an act of secession, was reconvened in July, 1861. This body took upon itself the government of the State, and was recognized as the lawful authority by the general government. Technically, Missouri was never "out of the Union."

The Proclamation of 1863.—In December, 1863, President Lincoln issued a proclamation to the effect that when one tenth of the qualified voters of a State, having taken the required oath, should reëstablish the State government, republican in form and in conformity with the oath, it should be recognized as the true government of the State, and should receive the benefits of the constitutional guaranty embodied in this clause which we are now considering. In pursuance of this proclamation, Louisiana and Arkansas provided themselves with loyal State governments. But these States having been reconstructed through the military power, the mode adopted was not entirely satisfactory to Congress, and the States were not allowed representation in that body.

Tennessee Restored in 1866.—The first State that was fully restored to her former relations to the Union was Tennessee. On the 24th of July, 1866, Congress passed a joint resolution "That the State of Tennessee is hereby restored to her former, proper, practical relations to the Union, and is again entitled to be represented by senators and representa-

tives in Congress." In the preamble to this resolution it is recited that the inhabitants of the State having been by act of Congress declared to be in a state of insurrection, the State government can be restored to its former political relations in the Union only by the consent of the lawmaking power; that the people, by a large vote, had adopted and ratified a constitution abolishing slavery, and declaring void all ordinances and laws of secession and debts contracted under the same; and had organized a State government under the new constitution, which had ratified the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

Military Districts.—In March, 1867, an "Act to provide for the more efficient government of the rebel States" was passed, and later in the same month a supplementary act for the same purpose. This act divided these States into five military districts, each to be under the command of a military officer, who should be charged with the duty of protecting the inhabitants in person and property, of suppressing all disorder, and punishing crime. Criminals might be tried by the local civil tribunals, or, at the discretion of the commanding general, by military commissions. The inhabitants were to be registered, and an election held for delegates to a convention in each State for the formation of a constitution. When such constitution should be approved by Congress, and the legislature elected under its provisions had ratified the Fourteenth Amendment, the State should become entitled to representation in Congress.

Remaining States Restored, 1868-70.—Under this act Arkansas was admitted to representation in Congress as one of the States of the Union, June 22d, 1868, having framed and adopted a constitution of State government which Congress decided to be republican, and her legislature having ratified the Fourteenth Amendment. Three days later an act was passed providing for the conditional admission to repre-

sentation of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida. These had framed and adopted constitutions of republican government, and were to be fully admitted as States of the Union when they should have ratified the Fourteenth Amendment. In all the above cases, including Arkansas, the admission was upon one or more fundamental conditions prescribed by Congress. All the six States made the required ratification, and were admitted without further legislation by Congress, except Georgia. Virginia was restored by act of Congress of January 26th, 1870 ; Mississippi by that of February 23d ; Texas by that of March 30th ; and Georgia by that of July 15th of the same year.

The Status of a Seceded State.—The action of the general government has fully settled this: that if a State takes the attitude of hostility to the nation, and refuses to acknowledge the supremacy of the Constitution of the United States, it forfeits its right to all participation in the government of the Union, and can be restored to its former position only by the distinct and formal action of the lawmaking power of the United States. The doctrine that the people of a State may take up arms against the nation, putting forth their whole energies and using all their resources to destroy the national life, and yet the moment they are subdued claim the right to send senators and representatives to Congress, is in the highest degree preposterous. Yet this doctrine was gravely maintained in the minority report of the Joint Congressional Committee on Reconstruction, in June, 1866. And many worthy people seemed to be involved in inextricable confusion as to the relation of such States to the Union.

A Logical Fallacy.—The argument assumes this logical form : A State is either in the Union or out of the Union. If in the Union, her people owe allegiance on the one hand, and are entitled to representation on the other. If out of the Union, they do not owe allegiance, nor are they entitled to represen-

tation. The inference drawn from this is that if the people of a State are not allowed representation in Congress, there rests upon them no obligation of obedience; and that whenever they acknowledge the obligation of obedience, representation is theirs as a matter of right.

The fallacy lies here. The terms *in the Union* and *out of the Union* are not necessarily contradictory. A given district of the United States may be in one sense in the Union, and in another sense out of the Union at the same time. That portion of our country called Ohio was a part of the national domain in 1800, and all the people living there were subject to the general government; in that sense the district and the people were *in the Union*. But the people had no participation in the general government, they had no senators or representatives in Congress, they cast no votes for President in the election of that year; in this sense they were *not in the Union*. A few years later Ohio was made a State by Congress, and then she was in the Union in both the senses stated. During the civil war South Carolina was not in the Union as Ohio was; she was not out of the Union as Mexico was. She had forfeited her right to a share in the government, but she was under the authority of the United States.

Whatever forms of language may be used to describe the attitude of portions of the country in a state of insurrection and their relation to the United States, we may be sure that they will not be admitted to a representation in the councils of the nation till, in the judgment of Congress, such admission will not conflict with the well-being of the country. No claim to be admitted, based on the ground "that a State once a State is always a State," will have the slightest influence with those who shall, for the time being, be entrusted with the legislative power of the nation, no matter what may be their theoretic opinions as to the rights of States. The war was commenced in the interest of State sovereignty, and the

sword has settled the question.[1] Let us hope that many years may elapse before the general government shall again be under the necessity of exercising the power with which it is clothed by this section of the Constitution.

ARTICLE V.

Amendments.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Definite provision is here made for amending the Constitution. The Articles of Confederation could not be altered except with the assent of *all* the States. The present Constitution, however, can be amended with the assent of three fourths.

Two Modes for Proposing and Ratifying Amendments.— There are two modes of *proposing* amendments, and two modes of *ratifying* them. Congress itself may propose an amendment whenever two thirds of both houses deem it necessary; or, if two thirds of the State legislatures request

[1] "It can not be too often repeated that the war was not primarily between freedom and slavery. It was the war of the Nation and the Confederacy."—Mulford, page 34.

it, Congress must call a convention for proposing amendments. Amendments thus proposed become valid when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof.

The First Mode Used.—Twenty-one amendments have been proposed since the adoption of the Constitution; all of them by the first mode. Two thirds of the legislatures have never yet applied to Congress to call a convention for this purpose. Fifteen of the amendments proposed have (1912) been ratified; and these ratifications have all been by the first mode—by the legislatures of the States, and not by conventions. The First Congress, which proposed twelve amendments, adopted this method of ratification, and its example has been followed in every other case. It is fortunate for the country that a convention has never been called for the purpose of proposing amendments. The organic law of a people should be framed with great care and altered with the utmost caution. A body of men convened for the purpose of suggesting alterations in the Constitution would be likely to magnify their office in proposing many amendments.

Three Limitations.—There are three limitations to this power of amending the Constitution : First, the clause could not be altered which prohibited Congress from passing, prior to the year 1808, a law prohibiting the importation of slaves. Secondly, the clause prescribing the mode of levying a capitation or other direct tax could not be altered prior to the same year, 1808. Thirdly, no State, without its consent, could be deprived of its equal suffrage in the Senate.

The first two limitations had reference to slaves, and became inoperative in 1808. The third was for the protection of the smaller States : to allow them the same representation in the Senate as the larger States. This provision was added at the very close of the Convention that framed the Constitution. Mr. Sherman, of Connecticut, had before moved that it be added to the article, but Mr. Madison opposed it, and it was

lost. Mr. Gouverneur Morris, of Pennsylvania, subsequently renewed the motion, and it was carried on Saturday, September 15th. On Monday the Convention adjourned. This is the only provision of the Constitution which is virtually irrepealable.

Proposed Amendment of 1861.—In 1861 an amendment was proposed by two thirds of both houses, as follows: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State." Had this amendment been ratified, it would have been in terms an irrepealable provision. Whether it would have been so in fact it is not necessary now to inquire, as the ratification did not take place.

The British Constitution may be altered by Parliament without any confirmation or ratification by the people. Parliament is thus, says Mr. Fisher, a "Convention to amend the Constitution, duly appointed, always in existence, and always competent to entertain proposals for needed alterations, with full authority to decide them. . . . It is a remarkable fact that, in conservative England, so steadfast in adhering to ancient usage, the power to make changes is always ready to act, without question or form or delay, and the organic law is thus pliable and responsive to the wishes of the people; whilst in democratic America, innovation is guarded against with such jealous care that it is doubtful whether the means provided by law for making needed changes can ever be employed."[1]

Events show that this language is too strong; for, since it was written, in 1862, three amendments have been made to the Constitution. Still, it may admit of question whether the difficulties in the way of amending our organic law are not too great for the best good of the nation. These difficulties are forcibly presented in the work just quoted from.

[1] Fisher's *Trial of the Constitution*, page 30.

President's Approval not Necessary.—When an amendment has been proposed by two thirds of both houses of Congress, is the approval of the President necessary? It is only an expression of opinion by Congress that a certain amendment is desirable, which Article V. contemplates, while the final decision in regard to it is to be made by other bodies. Then, again, a vote of two thirds is good against the President's veto. We should infer, therefore, that the approval of the President is not necessary. And the practice has been, for the most part, not to submit the resolutions to the President for approval.

The First Congress proposed twelve amendments. Nothing was said of the approval by the President.[1] The Amendment of 1798—the Eleventh—was called in question because the President had not approved it; but the Supreme Court decided that his approval was not necessary.[2] When the Amendment of 1804—the Twelfth—was before the Senate, it voted—twenty-three to seven—that the resolution be not submitted. That proposed at the second session of the Eleventh Congress was not sent to the President for his approval. The first instance in which an amendment proposed by Congress was sent to the President for his approval, was in March, 1861. That amendment—proposed as to slavery in the United States—was approved by President Buchanan. The Amendment of 1865—the Thirteenth—having been sent to the President through inadvertence, the Senate, without a division, decided that it should not constitute a precedent, and the secretary of the Senate was instructed not to communicate to the House of Representatives the notice of the approval.

The Amendment of 1868—the Fourteenth—was not submitted to President Johnson for his approval, of which he reminded Congress in a message and intimated that he would have vetoed it had the opportunity been offered.[3] The Fifteenth Amendment—ratified in March, 1870—was not sent to the President; nor were the amendments proposed in 1909 and 1912. This uniformity of action by Congress, and the decision of the Supreme Court, show that the approval of the President is not essential to a resolution of Congress proposing amendments to the Constitution.

When an Amendment becomes Valid.—An amendment becomes valid when ratified by the legislatures of three fourths

[1] *Annals of Congress*, I., page 779. [2] 3 Dallas, 378.
[3] Senate Jour., 39th Cong., 1st Sess., page 563.

of the States; that is, it becomes a part of the Constitution when the ratification has been made by the last State necessary to complete the constitutional number. Thus, the first ten amendments, proposed by the First Congress, September 25th, 1789, were ratified by New Jersey November 20th of that year, then by others, till December 15th, 1791, when the ratification of Virginia took place, making eleven States, the whole number being fourteen. December 15th, 1791, is thus considered the date of these amendments. The Eleventh Amendment was declared, in a message from the President to Congress, dated January 8th, 1798, to have been adopted by the requisite number of States, and the amendment bears the date of the President's message. Of the adoption of the Twelfth Amendment public notice was given by the Secretary of State, September 25th, 1804.

Act of 1818.—In 1818 an act was passed making it the duty of the Secretary of State, on receiving official notice from the States of the adoption of an amendment by the requisite number, to cause the amendment to be published, with his certificate that it has been duly ratified. This act is still in force.

The Withdrawal of a Ratification.—A question has arisen as to the power of a State to withdraw her ratification of an amendment to the Constitution. The legislature of New York ratified the Fifteenth Amendment, and subsequently voted to withdraw the ratification. The same is true of New Jersey and Ohio with regard to the Fourteenth Amendment. In the latter case the Secretary of State, after reciting the facts of the ratification by various States, including New Jersey and Ohio, and of the subsequent rejection by these two, proceeds: "I do hereby certify that if the resolutions of the legislatures of Ohio and New Jersey, ratifying the aforesaid amendment, are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the con-

sent of said States from such ratification, then the aforesaid amendment has been ratified, etc."

Congress was not satisfied with this conditional notice of adoption, and the next day adopted a concurrent resolution, declaring the Fourteenth Amendment to be a part of the Constitution, and directing the Secretary of State to promulgate it as such. The two houses of Congress have thus given their opinion that a State can not withdraw its consent when once given to a constitutional amendment.

The ground of this decision may be thus stated. The Constitution declares that an amendment duly proposed shall become valid when ratified by three fourths of the legislatures of the several States. When a legislature has voted affirmatively on the question of ratification, the work of the State is done so far as regards that amendment. The State is counted as in favor of it. Had the vote been a negative one, the State could not have been counted as in favor ; neither could it had there been no vote. "Nothing but ratification forecloses the right of action. When ratified, all power is expended. Until ratified, the right to ratify remains." [1]

In the case of the Fourteenth Amendment the Secretary's first proclamation was on the 20th of July, and the action of Congress on the 21st. Georgia, which had rejected it, ratified it on the 21st, making the requisite majority—twenty-eight in thirty-seven—without New Jersey and Ohio. The second proclamation of the Secretary was on the 28th. The amendment was thus ratified by the requisite number of States independently of the action of Congress.[2]

Ratification by a Disloyal State.—Another question has been discussed. In a time of rebellion, is a ratification of a proposed amendment by the legislatures of three fourths of the loyal States sufficient to make the amendment valid ?

[1] Governor Bramlette to the legislature of Kentucky, quoted by Jameson, page 520.

[2] For the other view, that a State may withdraw its ratification, see Cooley in Story II., page 652.

According to the views given in commenting upon Sections 3 and 4 of Article IV., this question must be answered affirmatively. If a State has forfeited her right to participate in the ordinary legislation of the nation, if she is deemed unfit, because of the disloyalty of her people, to assist in enacting the ordinary laws, much less can she claim participation in the higher and more sacred work of changing the great organic law of the Union. A proposed amendment to the Constitution is no more dependent upon the assent of a State holding such relation to the nation, than upon that of a Territory.

But did not Congress direct the last three amendments to be sent for ratification to the disloyal as well as to the loyal States? This was done, it is true; but this does not prove that their ratifications were essential to the validity of the amendments. The explanation of the seeming inconsistency of Congress is to be found in the peculiar character of these amendments as affecting the seceding States. They all had reference to the abolition of slavery, and to the *status* of the freedmen. Congress made the ratification of these amendments by those States a condition of their restoration to the Union. It was for this reason that the amendments were sent to them, and not because such ratification was essential to their validity. They were all ratified by three fourths of the loyal States, and would have been valid without the assent of the others. The ratification by the disloyal States was simply the formal approval by their legislatures of the principles contained in the amendments, and was to that extent an evidence that they might be restored with safety to their former condition in the Union.

The amendments that were adopted will be made the subject of comment in subsequent pages. The years when they were severally ratified are as follows:

The First Ten Amendments, 1791.
The Eleventh Amendment, 1798.
The Twelfth Amendment, 1804.
The Thirteenth Amendment, 1865.
The Fourteenth Amendment, 1868.
The Fifteenth Amendment, 1870.

Besides these amendments which now form part of the Constitution, Congress has proposed four that failed of ratification by the constitutional number of States (two proposed in 1789, one in 1810, and one in 1861); and two others recently (one in 1909 and one in 1912) which are now (1912) under consideration by the States. All six of these amendments are printed on pages 284–285.

ARTICLE VI.

Miscellaneous.

Clause 1.—*All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.*

A similar provision was made in the Articles of Confederation. There was a new Constitution, but the nation was the same. The nation under its new Constitution would be subject to all the obligations assumed before this Constitution had been adopted.

Clause 2.—*This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.*

Supremacy of the Constitution.—The language of this clause is clear and explicit. The people of the United States established this Constitution for the United States. It was the work of the nation itself, and was binding in every part of the republic. This clause was intended to affirm the supremacy of the national government over the State govern-

ments. If a law of a State, though in accordance with the constitution of that State, should be in conflict with the Constitution or a law of the United States, the former must yield. The judges in every State are expressly required to declare null and void any law of a State thus in conflict with a law of the United States or with its Constitution.

The Constitution of the United States is the organic law, and all statutes, national and State, must be in conformity with its provisions. But there is this wide difference between the legislation of Congress and that of a State legislature. The former body is guided by the Constitution only. The latter must regard not only the national Constitution, but the laws enacted by Congress, as well as its own State constitution.

A law of the United States is binding until declared unconstitutional by the courts. As already stated, the Supreme Court has declared very few acts of Congress unconstitutional since the Constitution was adopted.

An attempt was made by South Carolina, in 1832, to nullify certain laws of the Union, but it was promptly suppressed by President Jackson.[1]

Clause 3.—*The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.*

Oath to Support the Constitution.—This oath to support the Constitution is required of all officers, both national and

[1] Mr. John C. Calhoun's plan is here given as a curiosity. If Congress should pass a law which any State considered unconstitutional, the State, by a representative convention, might reject it, and require that it be submitted to the several States. If three fourths of the States approved it, the State objecting should submit; otherwise the law should be null and void so far as concerned that State.

State, and belonging to any of the three departments, executive, legislative, judicial. The Constitution itself (Article II., Section 1, Clause 7) prescribes the oath to be taken by the President of the United States. The first statute enacted under the Constitution was for the purpose of carrying into effect the present clause. On the 1st of June, 1789, a law was passed, prescribing the oath, as well as the time and manner of taking it, for the officers of the United States and of the several States. Objection was made to the bill on the ground that while an oath was obligatory upon all officers, State and national, there was no provision in the Constitution empowering Congress to pass a law enjoining the oath. To this it was replied that the general declarations of the Constitution could not be carried into effect without particular regulations adapted to the circumstances, and that these regulations must be made by Congress.[1]

The same objection has been made in numerous other instances, but the answer above given is sufficient. Were the objection to be regarded as valid, the wheels of government must stop. The Constitution is full of provisions requiring the performance of various duties, while no express power is given to Congress to pass laws prescribing the mode of performance. But Congress has always regarded itself as possessing the requisite power. In the first statute enacted under the Constitution, Congress decided that it had this power, and the law then enacted has remained in force to this day In regard to a similar clause, the Supreme Court held that "the end being required, it is a just and necessary implication that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end. . . . The national government, in the absence of all positive provisions to the contrary, is bound, through its proper departments, legislative, judicial, or executive, to carry into effect all the rights and duties imposed on it by the Constitution."

The act of June 1st, 1789, prescribed the following oath: "I, A. B., do solemnly swear, or affirm (as the case may be), that I will support the Constitution of the United States."

[1] *Annals of Congress*, I., page 266.

On the 2d of July, 1862, a very stringent oath of office was prescribed for all persons who should be elected or appointed to any office under the general government. The act required the person to take oath that he had never taken arms against the United States or aided its enemies; that he had not sought or held office under, or yielded any support to, any pretended government hostile to the United States. It was applied to attorneys by an amendment made in 1865.

This oath has been called the "ironclad oath," and it was this act which was pronounced unconstitutional by the Supreme Court, so far as it related to attorneys of that court. In 1868 (July 11th) the retrospective part of the ironclad oath was abolished for those persons having had participation in the rebellion, from whom all legal disabilities should have been removed by act of Congress, by a vote of two thirds of each house. In 1871 (February 15th) the act of 1868 was made applicable to all who participated in the rebellion who are not ineligible to office by the provisions of the Fourteenth Amendment. The law of 1862 was repealed in 1884.

The last clause—touching a religious test—provides for universal toleration. No desire has ever been manifested to remove this prohibition and introduce a religious test.

When the convention of South Carolina ratified the Constitution, it proposed this among other amendments—that the word "other" should be inserted after the word "no"; implying that an oath or affirmation to support the Constitution was itself a religious test.[1]

ARTICLE VII.

Ratification of the Constitution.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

The Articles of Confederation Disregarded.—The Articles of Confederation provided that no alteration should be made

[1] Jour. Cont. Cong., XIII., page 171.

in them "unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State." This provision was entirely disregarded in adopting the present Constitution, showing that those Articles were not regarded as anything more than a provisional constitution. They were in the "form of a compact among the States," in the language of Mr. Madison.

The PEOPLE, in whose name the Declaration of Independence was made on the 4th of July, 1776, had nothing to do with the Articles of Confederation. These had "no higher sanction than a mere legislative ratification."[1] The Convention had now framed a Constitution in the name of the *people*, by whom it was to be ratified. Thus the old Articles of Confederation were practically ignored by the convention and by the people of the United States.

Action of the Convention.—In the resolution of the Continental Congress, adopted February 21st, 1787, which provided for calling the Convention, it was stipulated that the Convention should report to Congress and to the several State legislatures for action by all these bodies. But the Convention, as seen in this article, did not ask the ratification of their work, either by Congress or by the State legislatures, but by conventions of the people. They not only ignored the old constitution, they also disregarded the directions of Congress as expressed in the resolution under which the Convention itself had been called. In the Convention Mr. Madison said it was essential that the direct action of the people should be had; and that the new Constitution should be ratified in the most unexceptionable form by the supreme authority of the people themselves.

The Constitution was to be binding when ratified by the conventions of nine States—two thirds of the whole number. This was the number required under the Confederation for declaring war, making treaties, emitting bills of credit, etc.

The Constitution Sent to Congress.—The Constitution was signed by the members of the Convention September 17th, 1787, and forwarded to Congress, with a resolution requesting that it be transmitted to the several States for ratification by

[1] Federalist, No. 43.

conventions. Another resolution was adopted by the Convention, making suggestions to Congress in regard to the mode of putting the Constitution into operation after it should be ratified. Accompanying these resolutions was a letter to the president of Congress by George Washington, president of the Convention.

Action of Congress and the State Conventions.—On the 28th of September Congress voted unanimously to transmit the Constitution to the several State legislatures, to be by them submitted to "conventions of delegates chosen in each State by the people thereof." It was ratified by Delaware December 7th; by Pennsylvania, December 12th; by New Jersey, December 18th; by Georgia, January 2d, 1788; by Connecticut, January 9th; by Massachusetts, February 7th; by Maryland, April 28th; by South Carolina, May 23d; and by New Hampshire, June 21st. This made the requisite number of States.

Plan for the New Government.—On receiving the intelligence that the ninth State had ratified the Constitution, Congress appointed a committee to report a plan for putting the new government into operation. This committee reported July 14th. On the 13th of September final action was taken, providing for the election of the two houses of Congress, and of a President and a Vice President, and appointing the 4th day of March as the day on which to commence proceedings. Meanwhile the Constitution had been ratified by Virginia (June 25th, 1788) and New York (July 26th, 1788), making eleven States. North Carolina had deferred it, and Rhode Island refused to call a convention. Both, however, ratified it subsequently; the former, November 21st, 1789, the latter May 29th, 1790. It will be remembered that Rhode Island sent no delegate to the Convention that framed the Constitution.

Suppose any State had Persisted in its Refusal.—The question naturally arises, what would have been the relation

of these two States to the United States had they finally refused to ratify the Constitution? It has been held by some that their *status* would have been that of foreign nations. This view is believed to be untenable. While the Constitution was undergoing discussion in the conventions, the question as to the relations to the others of any States that should not ratify it, was justly considered a very delicate one. The object of the friends of the Constitution was to induce every State voluntarily to adopt it; and to announce, beforehand, what would be the consequences of a refusal, might be construed into a threat, and so obstruct the attainment of the desired object.[1] Of this question Mr. Madison said, "The flattering prospect of its being merely hypothetical forbids an overcurious discussion of it. It is one of those cases which must be left to provide for itself. . . . Considerations of a common interest and above all the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped, not urge in vain *moderation* on one side, and *prudence* on the other."[2]

The View of Congress.—After the Constitution went into operation this question soon came before Congress. On the 5th of June, 1789, a resolution was introduced into the House of Representatives, urging the legislature of Rhode Island to call a convention. In July a law was passed imposing a tonnage duty of fifty cents a ton on foreign ships. In September this was suspended as to Rhode Island and North Carolina till January 15th, 1790. In February (North Carolina having meanwhile ratified the Constitution), at the request of Rhode Island, the suspension was extended to April 1st. Thus the ships of the people of Rhode Island were regarded as ships of citizens of the United States, by the request of Rhode Island herself. Meanwhile the legislature had passed an act providing for a convention. On the 18th of May the Senate of the United States passed a bill prohibiting all commercial intercourse with Rhode Island, and demanding a sum of money for her proportion of the expenses of the war. But before this was acted on by the House of Representa-

[1] Farrar, page 490. [2] Federalist, No. 43.

tives, Rhode Island had made the desired ratification. Among the reasons urged in the House for not passing the Senate bill was this: That Rhode Island was about to hold a convention; it would be pleasanter for all that she should come in freely; if the bill should pass and she were to come in she would be like "a soldier pressed into the service, looked upon as unworthy to be ranged with the volunteers."

A careful study of the proceedings in Congress will show that steps looking toward coercion had already been taken, and that had Rhode Island much longer refused to ratify the Constitution, she would have been compelled to choose between the condition of a State in the Union and that of a Territory or district under it. Rhode Island was a part of the domain of the United States, and she could not be allowed to alienate it.

"Both Rhode Island and North Carolina were component parts of the nation, and no practical statesman will admit for a moment that they could have been permitted, by a permanent refusal to take part in the new government, to constitute themselves independent foreign nations in the heart of the Republic." [1]

AMENDMENTS.

To complete the study of the whole Constitution as it stands at present, we must now consider the amendments that have been added to it.

Amendments by the First Congress.—At the time the Constitution itself was ratified by the States, several of them recommended amendments. In consequence of these recommendations, and to remove as far as possible all objections on the part of the people to the new Constitution, the subject was brought up in the First Congress, and the House of Representatives agreed, by the requisite vote of two thirds, to seventeen amendments. The Senate reduced the number to twelve. Ten of these were subsequently ratified by the

[1] Farrar, page 491.

legislatures of three fourths of the States. The same Congress decided that the amendments should not be incorporated into the text of the Constitution, but be appended to it, as a series of distinct provisions. They have been therefore numbered as so many distinct articles. They have the same force as the original Constitution.

The First Ten Amendments are of the nature of a bill of rights. Nothing of this distinctive character is contained in the original Constitution. A motion was made in the Convention for a committee to prepare such a bill, but it did not pass. Five States voted for it, and five against it; two were absent.[1] As the States in favor were Northern, and those against Southern, the inference has been drawn by some that a bill of rights was excluded in the interest of slavery.[2] Others have contended that the Constitution itself was a bill of rights. The necessity of a distinct declaration of rights in the Constitution of a republican government is not so obvious as under a monarchy. Guaranties against hereditary monarchs may be needed, but the people hardly need such guaranties against themselves.

Article 1.—*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.*

Prohibition on Congress.—This is a prohibition with reference to Congress; it imposes no restraint on the action of the States. It has been held that most of the amendments proposed by the First Congress do not apply to the States, but to the national government alone. The several State constitutions contained provisions similar to those found in these

[1] Elliot, V., page 538. "The manuscript of Madison represents the motion as negatived unanimously. The change yet remains a mystery."—Bancroft, II., page 210, note.

[2] Farrar, page 393.

amendments, restricting the operation of those governments. It was therefore for the purpose of restraining the various departments of the general government that these ten amendments were proposed. This is the view taken by the Supreme Court of the United States.[1]

Congress can not make any religion the established religion of the nation, neither can it do aught to prevent its free exercise.

Freedom of Speech and of the Press.—By "the freedom of speech or of the press" is meant the right to speak and publish whatever is not in derogation of private rights, and which does not disturb the public peace or tend to subvert the government. There is danger, in a republican government, of carrying this freedom to excess, both in speech and in the press. We must be careful not to injure others in their rights of any kind, or weaken the authority of the government. Especially in times of insurrection or rebellion is abundant caution needed. Too much regard can not be paid to time and place and circumstances. "I believe in free speech," said the Duke of Wellington, "but not on board a man-of-war."

The right to assemble peaceably and petition for a redress of grievances is too obvious to have needed mention in the Constitution of a free people.

Article 2.—*A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.*

The militia are the citizen soldiery of the country, as distinguished from the standing, or regular army. The militia system has been allowed to fall into partial decay, showing that the people have little fear of need to defend themselves by force of arms against their government.

[1] 7 Wallace, 321.

Article 3.—*No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.*

To *quarter* soldiers in a house is to station them there for lodging and subsistence. This was a mode by which despotic rulers might oppress their subjects. Article 3 recognizes the maxim of the common law, that a man's house is his castle. By *owner* is meant as well the occupant for the time being.

Article 4.—*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

This, like the previous article, is for the protection of the citizens. As soldiers could not be quartered upon them, so unreasonable searches and seizures are prohibited, and every search or seizure must be made by special, and not by general, warrant.

Article 5.—*No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.*

Article 6.—*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have*

been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Article 7.—*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.*

These three articles have already been considered in connection with Article III., Section 2, Clause 3. (Pages 220–23.)

Article 8.—*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

Prohibitions on Congress.—It has been maintained, as already stated, that this article refers to the national government, and not to the State governments; and the same has been held concerning some of the articles that precede it. "The first ten amendments were manifestly adopted from superabundant caution, as these rights were already sufficiently guarded by the State constitutions and bills of right." [1]

While some maintain that this amendment, as well as most of those which precede it, applies to the State governments as well as the national,[2] the courts have taken the other view. The language of the Fourteenth Amendment seems to imply the meaning given by the courts, as in it the States are prohibited from doing some things that the Fifth Amendment prohibits. If the Fifth applies to the State governments, what need of the same prohibitions in the Fourteenth?

[1] Duer, page 344. [2] Farrar, page 396.

Article 9.—*The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*

The very language of this article shows the impossibility of making any complete enumeration of rights. The inference might be drawn from some of the preceding articles, that what has not been therein prohibited, the government has the power to do. This article was inserted to prevent such an inference, by the declaration that other rights not specifically mentioned are not therefore to be denied. But what others? The matter is left in fact just where it was before any specific rights were enumerated.

It was well said by Mr. Hamilton "That bills of rights are, in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. . . . They have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain everything, they have no need of particular reservations. . . . The truth is, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS."[1]

Article 10.—*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

The word "Expressly" not here.—No part of the Constitution has been so often incorrectly quoted as this. The word "expressly" has been interpolated before the word "delegated," and many, perhaps, believe the Constitution to speak of powers *expressly* delegated to the United States.

[1] Federalist, No. 84.

But the word is not in the Constitution, either in this article or in any other. It *was* in the Articles of Confederation, which was not a real constitution, but only an agreement between the States.

A motion was made, when this amendment was under consideration in Congress, to insert the word "expressly," but it was not carried. Mr. Madison objected to it, "because it was impossible to confine a government to the exercise of express powers; there must necessarily be admitted powers by implication unless the Constitution descended to recount every *minutia*."[1] A few days afterward the motion was renewed, and again it was lost.[2]

This Amendment Misunderstood.—This Tenth Amendment has not only been misquoted; its meaning has been strangely perverted. Says Dr. Cooper, "Congress, under the Constitution of 1787 and its amendments, can exercise no rights or powers but such as are expressly enumerated and delegated, or that necessarily and unavoidably flow from those that are. Every other right and power is reserved by and remains vested in the States, to be delegated or not."[3] The *people* seem to be wholly ignored by this writer. He has no idea that the general government has any power save as it has been delegated by the States. But the States, as governments, have delegated nothing. All the power has come from the people. They have delegated to the United States government, and they have delegated to the State governments. The term "United States," in this amendment, means the United States government, and not the people. So "States" means the State governments.

Power Delegated by the People to both Governments.—The meaning of the amendment is plain. The people of the United States are the source of power. They have established a kind of double government—that of the United

[1] *Annals of Congress*, I., page 790. [2] Ibid, page 797.
[3] *Statutes of South Carolina*, I., page 217.

States and that of the several States. The people of the United States have authorized the general government, known as the United States, to exercise large powers, and in the same Constitution have made various prohibitions upon the State governments. Whatever there may be of the nature of governmental power, which has not been thus authorized to the general government, nor prohibited to the States, the people of a State may delegate to that State, or they may retain it undelegated. The States, as governmental corporations, have delegated nothing. The *people* of a State may insert in their own constitution any power not already inserted by the whole people in the Constitution of the United States, and not forbidden by the whole people to be inserted in a State constitution.

The Distinction between the People and the Government must never be lost sight of. The people make constitutions; governments carry on the legislative, executive, and judicial departments of civil society in conformity with the constitution thus made by the people. This is true of the whole people and of the people of the several States. The people of the United States are under no restrictions as to the powers with which they may clothe their government, except those that are imposed by the great rules of justice and right. But the people of a State are restricted. They may not confer on their State government any powers which the whole people have conferred on the United States government, nor any which the whole people have said shall not be exercised by the State governments. "What is not conferred by the Constitution is withheld, and retained by the State governments, if vested in them by their constitutions; and if not so vested, it remains with the people as a part of their residuary sovereignty. . . . It is a general principle that all bodies politic possess all the powers incident to a corporate capacity, without any express declaration to that effect; and one of those defects of the Confederation which led to its abolition,

was its prohibiting Congress from the exercise of any power 'not *expressly* delegated.'" [1]

These ten Amendments were proposed by Congress September 25th, 1789, and ratified December 15th, 1791.

Article 11.—*The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.*

This amendment, which has been considered already in connection with the judiciary (pages 210, 211), was proposed March 5th, 1794, and ratified January 8th, 1798.

Article 12.—This amendment, relating to the election of President and Vice President, is given in full (page 171) in the treatment of the executive department. It was proposed December 12th, 1803, and was officially declared to be ratified September 25th, 1804.

Article 13, Sec. 1.—*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

Section 2.—*Congress shall have power to enforce this article by appropriate legislation.*

First Use of the Word Slavery.—Until this amendment was made, the word *slavery* was not to be found in the Constitution. If the idea was there, it was expressed by a euphemism. Even the amendment proposed by Congress, March 2d, 1861, to which reference has already been made, spoke of "persons held to service or labor." But now that the institution was to be abolished, it was called by its own name.

[1] Duer, page 345.

Slavery had already been abolished by act of Congress in the District of Columbia, April 16th, 1862, and in the Territories June 19th of the same year. The President had also, by proclamation, January 1st, 1863, declared all slaves in certain States and parts of States free.

Ratification of the Thirteenth Amendment.—The resolution for the abolition of slavery was passed by two thirds of the Senate, April 8th, 1864; but the requisite majority was not secured in the House till the following winter. It was adopted January 31st, 1865, and transmitted to the States. The ratification by the requisite number of States was announced December 18th of the same year.

Mr. Secretary Seward, in his certificate that the amendment had become valid as part of the Constitution of the United States, named twenty-seven States—three fourths of thirty-six—as having ratified it. Of these, eight had been in the Confederacy; and though they had formed new free-State constitutions under the proclamations of Presidents Lincoln and Johnson, none of them had been formally restored to the Union by act of Congress. There were then nineteen loyal States that had ratified this amendment, and four others did so subsequently to the date of the certificate. According to the view taken in this work, that a proposed amendment becomes valid when ratified by three fourths of the loyal States, the Thirteenth Amendment was truly a part of the Constitution at the date of the Secretary's certificate, nineteen of the twenty-five loyal States having ratified it.

Those who think the ratifications of three fourths of the whole number of States requisite, maintain the legality of the ratification in this way: The eight insurrectionary States that ratified this amendment had been reconstructed in accordance with executive proclamations, though without any official recognition by Congress. But as this body had not disapproved of this reconstruction, and as this amendment had been sent to these States for ratification, Congress did give a kind of passive approval of the executive policy of reconstruction, and so virtually recognized

them as States. When subsequently (March 2d, 1867) Congress declared these eight with two others to be in a state of insurrection, the act had no retrospective effect.[1]

If the consistency of Congress is called in question in thus seeming to recognize these eight States by asking for, and receiving, their ratifications of the proposed amendment, and subsequently refusing admission to their senators and representatives, the explanation must be left to Congress. But whether these eight were veritable States under the Constitution or not, there can be no doubt that the Thirteenth Amendment has been duly ratified by three fourths of the loyal States, if those only should be counted, or by three fourths of the whole.

The second clause of the amendment seems wholly superfluous, as Congress has the same power to enforce this as any other provision of the Constitution.

Article 14, Sec. 1.—*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The Fourteenth Amendment was proposed by Congress, June 16th, 1866, and was declared to be a part of the Constitution, July 21st, 1868, by a concurrent resolution of the two houses of Congress. The Secretary's proclamation is dated July 28th.

Origin of Section 1.—The Thirteenth Amendment abolishes slavery throughout the United States. According to the opinion given by Mr. Justice Swayne, as already quoted, the emancipation of a slave removes the obstacle to his citizenship. Aliens become citizens by naturalization; slaves, by emancipation.

The act passed by Congress in April, 1866, known as the Civil Rights Bill, gave expression to this opinion. It declared all persons born in the

[1] Skinner's *Issues of American Politics*, page 204.

United States, and not subject to any foreign power, excluding Indians not taxed, to be citizens of the United States. It conferred upon the freedmen all the rights and made them liable to all the obligations of citizens. But it was doubted by some whether a mere act of legislation could confer citizenship, and whether it did not require the authority of the Constitution itself. To make sure the citizenship of the emancipated population, the principle of the Civil Rights Bill was embodied in this Fourteenth Amendment.

Different from Former Amendments.—While the first section had its origin in the purpose of the people to protect the colored population, the language is not restricted to them, but is applicable as well to all the citizens of the country. And, as it has been maintained that the first eight amendments had no reference to the State governments, but were restraints upon the general government only, this Fourteenth Amendment declares explicitly that "No *State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The greatest part of constitutional litigation in the United States Supreme Court has arisen under the Fourteenth Amendment. The clause forbidding the States to deprive "any person of life, liberty, or property without due process of law," gave the federal courts jurisdiction over a vast amount of litigation. The amendment has been construed by a long line of decisions upon its application to special occasions.

"Liberty" is not only freedom from personal, physical restraint, but the right to pursue any lawful occupation, to enter into contracts according to one's own judgment, and otherwise to be a free citizen. "Property" includes not only things physically possessed and evidences of debt like notes and bonds, but also contract rights, and the right to labor and pursue an occupation.

"Due process of law" can not be positively defined. What is due process of law in one instance is not in another. In some cases as between

two individuals, it means a proceeding in the courts with or without a jury according to the rules of the common law. As between the public and an individual it means in some cases a judicial proceeding and in others a mere "hearing" before decision. In the case of assessments for the cost of building public roads a chance to be heard in a reasonable manner and time is all that is required.

A citizen is liable to be deprived of his property without due process of law, either by being unequally and unjustly taxed so that the exaction amounts to a taking of property instead of fair taxation, or by being unjustly restrained in his use of his property by unfair laws purporting to be made in the interest of public health, safety, and welfare.

The police power of the States, under which they regulate ordinary affairs without technically depriving anybody of liberty or property, is very great. A State can require a man owning a brewery to cease using it, though the property be useless for any other purposes. Laundries in cities can be required to be conducted in certain kinds of houses to prevent fires. Miners may be prevented from working longer than a certain number of hours, in the interest of public health. Bakers, hack-owners, street and other railways, grain elevators, may be limited in the charges they can make for their services, without being deprived of liberty or of property. This is because their business is a public one. It is "affected with a public use" and the public have a peculiar interest in it. The regulation, however, must be reasonably adapted to the object it purports to accomplish, and must not be unfair.

Legislation to Enforce this Section.—In April, 1871, an act was passed to enforce the provisions of the Fourteenth Amendment. It was rendered necessary, in the judgment of Congress, in consequence of the treatment received by the colored people of certain States of the South, and the failure of those States to afford them the protection required by the Constitution. The act is known as the Ku Klux Bill. It provides that the failure of a State to protect any portion of its people against unlawful combinations shall be deemed a denial of the protection guaranteed in this amendment. Under this act the President suspended the writ of *habeas corpus* in certain counties, and suppressed the combinations.[1] In March, 1875, an act was passed entitling all persons to the full and

[1] For a severe criticism of the law see Skinner, page 316.

equal enjoyment of inns, public conveyances, places of amusement, etc., regardless of race, color, or previous condition of servitude; but the Supreme Court has decided that this legislation was unconstitutional so far as the States are concerned.

Section 2.—*Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.*

So long as there were slaves, three fifths of them were counted in order to ascertain the population of a State, and thus the number of representatives to which the State was entitled. But slavery having been abolished, representatives must be apportioned among the States according to their respective numbers.

Inequality in Representation.—The number of representatives being in proportion to the whole population of the States, including those that are colored, if suffrage were denied to this class the former slave States would have delegations in Congress much larger, in proportion to the number of voters, than the original free States. To remedy this inequality was the object of this second section. By it the States were not required to allow the blacks the right of suffrage; but if they did not allow it, their representation in

Congress was to be proportionately diminished. They might take their choice between general suffrage and more congressmen, or white suffrage and fewer congressmen.

The Normal Case of Suffrage.—This section implies the normal case of suffrage to be this: that all male citizens of twenty-one years of age may vote. For it provides that if any such are not allowed by their State to vote, the number of representatives in such State shall be diminished. This seems to throw the moral influence of the Constitution in favor of universal suffrage. There is nothing, however, to prevent any State from prescribing a qualification of intelligence or one of property. But as this amendment might reduce the number of representatives for a State, should any large number of former voters be found not to possess the required qualification, the probability of suffrage limitation is rendered less than before.

Restrictions of the Suffrage.—Since 1890 educational or property qualifications have been inserted in the constitutions of most of the Southern States. The effect of these provisions has been to disfranchise a large proportion of the negroes. Educational qualifications are imposed in some Northern States, but they do not result in the exclusion of very many persons from the suffrage. No action, however, has been taken by Congress to apply the Fourteenth Amendment to any of these cases. Some writers claim that this part of the amendment was practically superseded by the adoption of the Fifteenth Amendment.

Woman Suffrage.—It has been claimed that the Fourteenth Amendment establishes the principle of woman suffrage. Does it? The first section declares who are citizens. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens. They are citizens as soon as born. Children, as well as men and women, are citizens. Citizenship and suffrage, then, are not the same. This section confers *civil* rights, but not *political*. A State is prohibited from interfering with civil rights, but nothing is said of suffrage.

The second section provides that if in any State any *male* citizens of *twenty-one* years of age are denied the rights of voting, the State shall suffer by a proportionate reduction of the number of representatives in Congress. If citizenship implied the right to vote, no State *could* deprive a constitutional citizen of that right. The very supposition, in the second section, that a State *may* deny the right to vote to some whom the Constitution declares to be citizens, is proof that one may be a citizen and yet be unable to vote; and, therefore, the conferring of citizenship is not the conferring of the right of suffrage.

Again, those citizens whom a State may not with impunity deprive of the right of suffrage have two requisites: they are *males,* and of the age of *twenty-one years.* A State may prevent others from voting as much as she pleases; the Constitution contains no inhibition, and affixes no penalty for such prevention. If the first section gives women the right to vote, the second permits a State to take the right away. Virtually the Constitution in this amendment indicates the essential requisites for the exercise of suffrage. Voters must be *male* citizens of the age of *twenty-one.* These two qualifications are placed in the same category, and hold precisely the same relation to suffrage. If the right to vote belongs by this second section to one not a male, by the same reasoning it belongs to one not twenty-one years old. The real meaning is, that as males under twenty-one are not expected to vote, so women are not expected to vote.

There is nothing whatever in this amendment, however, to prevent a State from conferring the suffrage on women if it chooses to do so; and in several of the States women now vote on an equality with men.

Section 3.—*No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or*

under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

This section needs little comment. Those who as officers under a State or the nation had sworn to support the Constitution of the United States, and then engaged in insurrection, are precluded from again holding office, except Congress, by a vote of two thirds, shall remove the disability.

The Pardoning Power of the President.—Article II., Section 2, of the Constitution gives the President power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. It is doubted whether cases of amnesty were intended to be included. Early in the civil war, July 17th, 1862, Congress authorized the President to issue proclamations of amnesty. This was done by President Lincoln and by President Johnson. In January, 1867, the authority was withdrawn by Congress, but President Johnson nevertheless issued other proclamations even after the ratification of this amendment. Whether he had the authority to issue such proclamations after the repeal of the provision referred to, is doubtful; but certainly he had no power, after the adoption of this amendment, to absolve from their guilt any offenders included under its provisions. As the second section of Article II. of the Constitution gave the pardoning power to the President, so this third section of the Fourteenth Amendment repealed that power so far as applicable to the classes named therein.

Removal of Disabilities.—The disabilities imposed by this section were removed, in the manner prescribed in the last sentence thereof, by private acts in many cases in years immediately following the civil war. In 1872 Congress removed these disabilities from all except the following: senators and representatives of the Thirty-sixth and Thirty-seventh Congresses; officers in the judicial, military, and naval service of the

United States; heads of departments, and foreign ministers of the United States. Some of the persons affected by these exceptions were relieved from the disabilities by private acts; and in 1898 Congress removed all the disabilities theretofore incurred.

Section 4.—*The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.*

This section had immediate reference to the existing public debt, which was incurred in prosecuting the civil war; but the language is general, and therefore applicable to all public debts. The prohibition as to the payment by the United States or any State of any part of a debt incurred in aid of insurrection or rebellion against the United States, is also general. The measure was one of obvious security, as under the reconstruction laws many of those formerly in the Confederacy were admitted to the State and national legislatures. It was better for all to have the question settled by the adoption of a clause in the organic law itself.

Section 5.—*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

The same remark may be made of this as of the corresponding section in the Thirteenth Amendment; it seems to be unnecessary. Whatever the Constitution requires, Congress has the power to carry out by appropriate legislation, whether there be specific provision for it or not.

Article 15, Sec. 1.—*The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.*

Section 2.—*The Congress shall have power to enforce this article by appropriate legislation.*

This Fifteenth Amendment was proposed by Congress, February 27th, 1869, and was declared to be duly ratified March 30th, 1870.

Object of this Amendment.—The second section of the Fourteenth Amendment was intended to secure suffrage to the freedmen. This was to be done indirectly, however. The right of suffrage was not conferred upon the colored race by a direct affirmative grant, but the States which should withhold it were to have their number of representatives in Congress reduced in proportion. The measure was not attended with the success which was anticipated. The enfranchisement of the colored race was deemed indispensable to their own safety and to the prosperity of the nation ; and the first plan to secure it having failed, a second was proposed. Hence this Fifteenth Amendment. It declares expressly that the right of citizens to vote shall not be denied or abridged on account of race, color, or previous condition of servitude. The Fourteenth Amendment declared the colored race to be citizens, and thus gave them all civil rights; and the Fifteenth secures them suffrage, and thus bestows upon them political rights.

To Whom Applicable.—This article does not, of course, imply that all citizens possess the right to vote. We have seen that the Fourteenth Amendment declares children, as well as adults, to be citizens, showing that to make the right of suffrage coextensive with citizenship would be simply absurd. The meaning is that the right of male citizens twenty-one years old to vote shall not be denied on account of race,

color, or previous condition of servitude. The right to vote may not be denied for any of these three causes, but it may for any other cause. The freedmen are put upon an equality with others as to the right of suffrage. If an educational qualification is required, it must apply to the whites as well as to the negroes. So with a property qualification.

The right to vote implies the right to be voted for.

In May, 1870, Congress enacted a stringent law "to enforce the right of citizens of the United States to vote." It was amended in February, 1871, and was repealed in 1894.

AMENDMENTS PROPOSED BUT NOT RATIFIED.

Four amendments proposed by Congress were not ratified by the legislatures of three fourths of the States.

Two of these were proposed by the First Congress. Twelve were proposed, of which the last ten were ratified. The other two were as follows:

1. **Basis of Representation.**—"After the first enumeration required by the first article of the Constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress that there shall not be less than two hundred representatives nor more than one representative for every fifty thousand persons."

2. **Pay of Congressmen.**—"No law varying the compensation for the services of the senators and representatives shall take effect until an election of representatives shall have intervened."

The following amendment was proposed by the Eleventh Congress at its second session:

3. **Presents, etc., to Citizens.**—"If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of

the United States, and shall be incapable of holding any office of trust or profit under them or either of them."

The fourth of the amendments proposed but not ratified was proposed at the close of the Thirty-sixth Congress, March 2d, 1861.

4. Congress and Slavery.—"No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

AMENDMENTS UNDER CONSIDERATION (1912).

The following amendment was proposed by the Sixty-first Congress at its first session, in July, 1909. During the next three years it was ratified by thirty-one States. Of the other seventeen States some rejected it and some have not yet (1912) taken definite action on it.

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

In May, 1912, the Sixty-second Congress, in its second session, proposed an amendment as follows, to replace Clause 1 of Section 3 of Article I of the Constitution, and so much of Clause 2 of the same Section as relates to the filling of vacancies:

"The Senate of the United States shall be composed of two senators from each State, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution."

CHAPTER V.

The Ratification of the Constitution by Conventions in the Several States.

The Convention and the Congress.—As we have seen in an earlier chapter (page 43), the Constitution was adopted and signed by the members of the Convention in September, 1787.

The following resolutions, adopted by the Convention, were transmitted to Congress, with a copy of the Constitution, accompanied by a letter from the President.

"In Convention, Monday, September 17th, 1787.

"*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

"*Resolved*, That it is the opinion of this Convention that as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed and the senators and representatives elected; that the electors should meet on the day fixed for the election

of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the Senate for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

"By the unanimous order of the Convention,

"George Washington, *President.*

"William Jackson, *Secretary.*"

Plan of the Convention.—The resolution of Congress, adopted February 21st, 1787, recommending that a Convention should be held for the purpose of revising the Articles of Confederation, contemplated that those alterations, after being agreed to by Congress, should be confirmed by the States. But the Convention, in the resolutions transmitted to Congress with a copy of the Constitution, proposed that this confirmation should not be by the States, *i.e.*, by the legislatures of the States, but that the instrument should "be submitted to a convention of delegates chosen in each State by the people thereof."

The Articles of Confederation had been adopted by Congress and ratified by the legislatures of the several States. They had never been submitted to the people. Congress expected that the alterations would be submitted to the legislatures and not to the people. The Convention thought, however, that if the adoption of the new Constitution were to be referred to the State legislatures it would not rest on the direct authority of the people.

The New System would Abolish the Old.—The Articles of Confederation could not be amended without the assent of all the States; but the Constitution was to go into effect when

nine of the thirteen should have ratified it. The Convention, therefore, "had prepared a system of government that would not merely alter, but would abolish and supersede the Confederation; and they had determined to obtain, what they regarded as a legitimate authority for this purpose, the consent of the people of the States, by whose will the State governments existed."[1] The Articles of Confederation were the work of Congress and the State governments. The people had no participation in them. They were not in the name of the people. But the Constitution framed by the Convention of 1787 was in the name of the people; and, should it go into operation, would derive its validity from the people themselves. Prior to the adoption of the present Constitution, the United States could hardly be said to have a constitution. They had a government, and the relation of the States to the nation was virtually the same as now; but their respective duties had not been definitely stated, and there was no little friction in the working of the governmental machinery. The members of the Convention had great hopes that the new Constitution would be found to remedy these evils, and in this they were not disappointed.

Action of Congress.—Congress having received the report of the Convention, adopted (September 28th) the following resolution: "*Resolved*, unanimously, that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case."

Congress, it will be seen, merely transmits the Constitution to the State legislatures, without either approval or disapproval. This was what the Convention had requested, though a vote of approval would have facilitated its adoption in the conventions of the States. But some opposition

[1] Curtis, II., page 481.

was made in Congress to the Constitution, and to obtain unanimity it was necessary, says Mr. Madison, to couch the resolution in very moderate terms. It was first contended that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the constitution under which they acted. This objection having been answered, an effort was made to amend the Constitution by inserting a bill of rights, trial by jury in civil cases, etc. Had this effort been successful, it would, without doubt, have defeated the Constitution, as two instruments would have been placed before the people for their ratification.

Rumors as to the Constitution.—The Convention had kept their proceedings secret, and there was consequently great anxiety to know the character of the new Constitution. Singular rumors were circulated, among which was one that a system of monarchical government had been framed, and the monarch designated in the person of one of the sons of George III. But, two days after the Convention adjourned, the new Constitution was published in the newspapers of Philadelphia, thus dispelling all doubt in regard to it.

Its Friends and its Opponents.—"It met everywhere with warm friends and warm opponents." Mr. Curtis classifies its advocates thus: first, a large body who regarded it as the admirable system which it proved to be when put into operation; second, those who believed it to be the best attainable government that could be adopted by the people of the United States, overlooking defects which they acknowledged, or trusting to the power of amendment which it contained; and, third, the mercantile and manufacturing classes who regarded its commercial and revenue powers with great favor. "Its adversaries," he says, "were those who had always opposed any enlargement of the federal system; those whose consequence as politicians would be diminished by the establishment of a government able to attract into its service the highest classes of talent and character, and presenting a service distinct from that of the States; those who conscientiously believed its provisions and powers dangerous to the rights of the States and to public liberty; and, finally, those who were opposed to any government, whether State or national or federal, that would have vigor and energy enough to protect the rights of property, to prevent schemes of plunder in the form of paper money, and to bring about the discharge of public and private debts."

Ratifications by the States.—The legislatures of all the States, except Rhode Island, called conventions of the people to act upon the Constitution, though in some of them there was strong opposition. Thus in New York the resolutions for a convention were passed by majorities of only three in the Senate and two in the House; and this on the 1st of February, 1788, when five States had already ratified the Constitution.

The first ratification was by Delaware, on the 7th of December, 1787. It was done unanimously, and without the recommendation of any amendment.

Pennsylvania was the second to ratify. This was done, without declaration or recommendation, on the 12th of December, by a vote of 46 to 23.

New Jersey ratified the Constitution December 18th. Her vote was unanimous.

The next was Georgia, which was also unanimous in her ratification. It was done January 2d, 1788.

Connecticut followed on the 9th of January, ratifying without any declaration, and without recommendations, by a vote of 128 to 40.

The convention of Massachusetts commenced its sessions on the 9th of January, the day of the ratification by Connecticut, and continued in session till the 7th of February. The discussion was warm and able, and the Constitution was ratified at last by a majority of only 19 in a convention of 355. Nine amendments were recommended, two or three of which were included in the amendments proposed by the First Congress.

Maryland passed a vote of ratification April 28th. The vote stood 63 to 11, and there were no amendments or resolutions.

South Carolina ratified the Constitution May 23d, 1788, by a vote of 149 to 73. Several amendments were recommended.

New Hampshire the Ninth State.—The ninth State was New Hampshire. Her ratification was made June 21st, 1788, by a majority of 11. The convention had assembled in Feb-

ruary, but after a warm discussion had adjourned to the 18th of June. Three conventions were in session at the same time: that of Virginia having convened June 2d, and that of New York on the 17th. New Hampshire accompanied her ratification with twelve amendments, of which three were subsequently embodied in the amendments proposed by Congress.

As the Constitution was to become binding when nine States had ratified it, New Hampshire completed the number. As soon as the intelligence of her action reached Congress, a committee was appointed to report an act for putting the Constitution into operation.

Virginia the Tenth.—The tenth State in the order of ratification was Virginia. She ratified on the 25th of June, by a vote of 89 to 79.[1] It should be stated that this vote was taken before the convention knew of the action of New Hampshire. The members of the Virginia convention supposed that by her ratification she would make the number complete. The convention proposed many amendments, and accompanied their ratification with a declaration of rights. "We, the delegates of the people of Virginia, . . . do, in the name and in behalf of the people of Virginia, declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whenever they shall be perverted to their injury or oppression," etc.

This shows very clearly the opinion of the majority of the members of the convention as to the source of the powers granted under the Constitution. These powers came, not from the States, but from the people of the United States.

New York the Eleventh.—New York was the eleventh State to ratify the Constitution. The opposition was very strong, and it was for some time doubtful whether the vote

[1] The date usually given is June 26th. The vote of ratification was on the 25th; an engrossed form of the ratification was read and signed by the president on the 26th. —Elliot, III., page 656.

of ratification could be carried. Two of the three delegates sent by New York to the Convention which framed the Constitution left the Convention when they became satisfied that a new instrument would be framed. These two delegates—Messrs. Lansing and Yates—as well as Mr. Hamilton, were in the State convention. A form of ratification was proposed which provided that the act of ratification was made "on condition" that Congress would not exercise certain powers till a general convention should be called for proposing amendments. The words "on condition" were finally stricken out, and the words "in full confidence" substituted; though the vote was 31 to 29. In this form the ratification was voted, 30 to 27, on the 26th of July.

A long declaration of rights was made, and a great number of amendments were proposed.

Action of North Carolina.—The convention of North Carolina commenced its session July 21st, but adjourned on the 2d of August, after passing a resolution that a declaration of rights and certain amendments ought to be laid before Congress and a convention which might be called for amending the Constitution, previous to its ratification by North Carolina. This was adopted by 184 to 84. More than a year later another convention was held, and, on the 21st of November, 1789, North Carolina ratified the Constitution by a majority of 11. This was more than eight months after the Constitution had gone into operation. This ratification was accompanied with a bill of rights and many amendments, mostly like those of Virginia. It should be noted that del egates from North Carolina, and one of those from Rhode Island, continued in the Continental Congress to the last, and delegates from both States voted on questions pertaining to the Constitution as late as August 6th, 1788.

Action of Rhode Island.—Rhode Island sent no delegates to the Convention which framed the Constitution. When that instrument was received from Congress, the legislature

caused it to be published and circulated among the people, but did not call a convention to ratify it. Instead of this they referred the adoption of it to the people in their town meetings for the purpose of having it rejected. There were but four thousand legal voters in the State, and of the small minority who favored the adoption of the Constitution few voted. The votes against it were 2,708; those in favor, 232. This was in March, 1788. After an interval of more than two years Rhode Island called a convention, which ratified the Constitution on the 29th of May, 1790.

The ratification of New Hampshire, which was the ninth in order, was received by Congress July 2d, 1788. A committee was appointed on the same day to examine the various ratifications and report an act for putting the Constitution into operation. The only member who voted against the appointment of a committee was Mr. Yates, of New York, who left the Constitutional Convention and voted against the ratification of the Constitution in the convention of New York.

Election of President and Congressmen.—The committee reported, on the 14th of July, an act which was debated till the 13th of September, when the following resolution was adopted:

"*Resolved*, That the first Wednesday in January next be the day for appointing electors in the several States which, before the said day, shall have ratified the said Constitution; that the first Wednesday in February next be the day for the electors to assemble in their respective States and vote for a President; and that the first Wednesday in March next be the time, and the present seat of Congress [New York] the place, for commencing proceedings under the said Constitution."

The first Wednesday in March of the year 1789 happened to be the fourth day, which thus became the initial day of our governmental year. On the 4th of March each new Congress

commences its existence, and on this day the President is inaugurated.

Elections of senators and representatives were held in the several States, and the first Congress under the Constitution met at New York on the 4th of March, 1789. For want of a quorum the organization was not effected till the 1st of April in the House and the 6th of April in the Senate. The electoral votes were then counted in the presence of both houses.

Washington the First President.—George Washington was found to have been elected President by a unanimous vote (69); and John Adams was declared Vice President, as having the next highest number (34), though it was less than a majority. Mr. Adams took the chair as president of the Senate April 21st, and General Washington was inaugurated President April 30th, 1789, in the city of New York.

Thus quietly the government went into operation under the new Constitution. It seems extraordinary that a President should have been unanimously elected when we remember the great opposition which the Constitution encountered, and the fact that the new President had presided over the Convention which framed that instrument. At the expiration of his first term, President Washington was again elected by a unanimous vote, fifteen States now voting while before there had been but ten.[1] Vermont and Kentucky had been admitted into the Union before the second presidential election. Since the administration of President Washington, no President has received the votes of all the electors.

Real Character of the Constitution.—Those who had opposed the Constitution in the State conventions gave in their acquiescence when they found that the people were in favor of it. The dangers which had been feared were found to be imaginary. The Constitution has proved itself to be just what

[1] At the time of the first election, North Carolina and Rhode Island had not ratified the Constitution, and the two houses of the New York legislature disagreed as to the mode of choosing electors.

the nation needed.[1] Once only has there been a determined effort to overthrow it. To effect this, an interpretation was placed upon the Constitution the opposite of that attributed to it by those who opposed its ratification in 1787 and 1788. Patrick Henry, and those who agreed with him, voted against ratifying the Constitution because it was the constitution of a nation and not of a league of States. In 1861 the people of a portion of the States claimed the right of peaceful secession, because, as they affirmed, the government was a league. Had it been so understood when the adoption of the Constitution was under discussion in the State conventions in 1788, those who were the most strongly opposed to it would have been the most eager to adopt it.

[1] Sir Henry Sumner Maine, writing in 1885, speaks of the signal success of the Constitution of the United States, and affirms it to be "much the most important political instrument of modern times."—*Popular Government*, page 196.

CHAPTER VI.

The Admission of New States—The Territorial Governments.

At the birth of the nation, July 4th, 1776, there were thirteen States; in 1912 there were forty-eight. The Constitution went into operation when only eleven had ratified it; but the other two gave their ratifications shortly after. The relation of these two to the others, if they had refused to ratify, has been discussed in a former chapter (pages 263–265).

Congress has admitted thirty-five new States into the Union. Of these ten were formed entirely and two others mostly from territory belonging to the United States or to individual States when the Constitution was adopted; and thirteen came wholly or in large part from the Louisiana purchase.

Vermont, March 4th, 1791.—The first State admitted into the Union after the adoption of the Constitution was Vermont. The people of Vermont, in January, 1777, proclaimed themselves a free and independent State. In December of that year the same convention which had proclaimed the independence of the State, adopted and put into operation a constitution. But as the territory was claimed by New York, opposition was made by that State to her admission into the Union. It was not till the year after the Constitution of the United States went into operation that New York, by her commissioner, consented to relinquish her claim to soil and jurisdiction, Vermont paying the sum of thirty thousand dollars. The formal consent of New York was given March 6th, 1790, by her legislature. Application was made by Vermont for admission February 9th, 1791, and an act, to take effect on the 4th of March, was approved February 18th.

Vermont, the first of the new States, thus became an integral part of the Union March 4th, 1791. She came in with the constitution which her convention had adopted fourteen years before, and which has remained substantially the same to the present time.

Kentucky, the second new State, was admitted June 1st, 1792. As Vermont was formed from a part of New York, so Kentucky was formed from a part of Virginia. The question of forming a new State from that portion of Virginia known as the District of Kentucky, began to be agitated as early as 1784. A number of conventions were held, but no results followed till December 18th, 1789, when Virginia passed an act giving her consent to a separation, to take place June 1st, 1792. On the 4th of February, 1791, Congress, in answer to a petition from a convention in Kentucky, consented to her admission, which was to take place June 1st, 1792, according to the agreement with Virginia.

Tennessee, June 1st, 1796.—The third State admitted into the Union was Tennessee, June 1st, 1796. This was originally a part of North Carolina. Like Vermont, Tennessee had once proclaimed herself independent. She called herself the State of Franklin (or Frankland), elected officers, and set up a government separate from North Carolina (1784). The attempt to maintain the authority of this government was, however, unsuccessful; and by 1788 North Carolina was again in control.

On the 25th of February, 1790, North Carolina made a cession to the United States of her claim to the territory lying between the mountains and the Mississippi, with this among other conditions: "That the territory so ceded shall be laid out and formed into a State or States, containing a suitable extent of territory, the inhabitants of which shall enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the western territory of the United States."

On the 2d of April of the same year, Congress accepted the cession, and on the 26th of May passed an act organizing the "Territory of the United States south of the river Ohio." In July, 1795, the territorial legislature ordered a census to be taken to ascertain whether the population amounted to 60,000, this number entitling the Territory to admission into the Union as a State by the terms of the Ordinance of 1787 and the deed of cession. The census showing a sufficient population, a convention was called to form a State constitution. This body met in January, 1796, and on the 6th of February adopted a constitution. A copy was forwarded to the President of the United States in the same month, with a notification that on the 28th of March the territorial government would cease. The peculiar action of Tennessee in demanding rather than asking admission into the Union is to be explained by her understanding of the Ordinance of 1787. A very earnest debate in Congress followed, but finally an act for admission was passed; it was approved June 1st. Tennessee was the first State admitted which had been previously governed as a Territory.[1]

Ohio Admitted, February 19th, 1803.—Three new States had thus been admitted into the Union before the close of the eighteenth century: Vermont, Kentucky, and Tennessee. The first in the nineteenth century was Ohio, admitted February 19th, 1803. The old States had ceded to the United States all their claims of jurisdiction, and, with a few exceptions, of soil, to territory lying northwest of the Ohio River. On the 13th of July, 1787, while the Convention was framing the Constitution at Philadelphia, Congress at New York

[1] The Census returns and some other official publications make Kentucky a part of the "Territory of the U. S. south of the river Ohio," and the same error is found in various other works. This Territory, organized May 26th, 1790, was limited to that ceded by North Carolina and a strip by South Carolina. Kentucky was regarded as a part of Virginia, and as such was admitted into the Union. Virginia had given her consent to the admission of Kentucky before North Carolina had made her cession, and before the Territory south of the Ohio had been organized.

passed an "Ordinance for the Government of the Territory of the United States North-west of the River Ohio."

The Ordinance of 1787 was the most important act performed by Congress under the Articles of Confederation. "Never, probably, in the history of the world, did a measure of legislation so accurately fulfill, and yet so mightily exceed, the anticipations of the legislators."[1] Its object was declared to be to extend "the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected ; to fix and establish those principles as the basis of all laws, constitutions, and governments which forever hereafter shall be formed in the said Territory." (The ordinance in full may be found in the Appendix.)[2]

The Territory embraced all the land which belonged to the United States northwest of the Ohio River. It extended from Pennsylvania to the Mississippi, and from the Ohio to the Great Lakes. The ordinance provided for its division into not less than three States, nor more than five. Five States have been organized : Ohio, Indiana, Illinois, Michigan, and Wisconsin. The territorial government was organized soon after the passage of the ordinance. The government was vested in a governor and judges ; but when there should be 5,000 free males of full age, a territorial legislature might be elected. The first governor was General Arthur St. Clair, who was president of Congress when elected. He entered upon his duties in July, 1788, at Marietta. The first territorial legislature met at Cincinnati, September 16th, 1799.

In May, 1800, the Territory was divided ; the western por-

[1] Chase's *Statutes of Ohio.*

[2] This ordinance was enacted immediately after an association of Revolutionary officers had proposed to Congress to buy a large tract of land on the Ohio for the purpose of settlement. These men wanted the protection of a good government, and this ordinance was framed in accordance with their wishes. Some of its best provisions are known to have been incorporated at the suggestion of the agent of the association, Rev. Manasseh Cutler, of Massachusetts. The settlement was made at Marietta, April 7th, 1788, under the leadership of General Rufus Putnam.

tion being called the Territory of Indiana, of which W. H. Harrison, afterward President, was made governor. April 30th, 1802, Congress passed an act to enable the people of the eastern division to form a constitution and State government. The convention met at Chillicothe, November 1st, framed a constitution, and adjourned on the 29th. The constitution was not submitted to the people. On the 19th of February, 1803, Congress passed an act making Ohio a judicial district of the United States, and thus constituted it a State.[1]

Louisiana came next into the Union, April 30th, 1812. About the time Ohio was admitted, in 1803, a treaty was made with France, in which that power ceded to the United States the vast territory known then as Louisiana, lying between the Mississippi River and the Rocky Mountains. By this purchase the area of the United States was more than doubled. From it the following States have been formed: Louisiana, Arkansas, Missouri, Iowa, part of Minnesota (the rest being from the Northwest Territory), North Dakota, South Dakota, Nebraska, most of Kansas, most of Montana, most of Wyoming, a large part of Colorado, and most of Oklahoma.

A temporary government was provided the year of the treaty, 1803, and March 26th, 1804, Congress divided the region into two territories—the Territory of Orleans and the District of Louisiana. March 2d, 1805, an act was passed authorizing a constitution and State government in the Territory of Orleans when its free inhabitants should number

[1] The day of adjournment of the convention, November 29th, 1802, is sometimes given as the date of admission, because of the language of the enabling act—"the said State, when formed, shall be admitted into the Union." But the same words are in the enabling acts for Indiana, Illinois, and most of the States admitted since, yet for each of them there was a distinct act of admission. There is no reason why an enabling act and the framing of a constitution should be sufficient for Ohio and not sufficient for all other States. In January, 1803, President Jefferson nominated to the Senate persons for public office at Marietta in "the Northwest Territory." The President of the United States regarded this region as then a *Territory* and not a *State*. March 1st, just after the act of February 19th, constituting the State of Ohio, he nominated Charles W. Byrd for United States District Judge in "the State of Ohio."

60,000. On the 20th of February, 1811, an act was passed to enable the people to form a constitution and State government. This was done January 22d, 1812, and the State was admitted into the Union by act of Congress, April 8th, 1812, to take effect April 30th of that year.

Indiana, formed from a part of the Northwest Territory, was admitted December 11th, 1816. The Territory of Indiana, formed May 7th, 1800, was divided January 11th, 1805, the Territory of Michigan being established. It was again divided, February 3d, 1809, the Territory of Illinois being established. The people of Indiana Territory having applied for admission into the Union, an enabling act was passed by Congress, April 19th, 1816, and a constitution was formed June 29th. A joint resolution admitting Indiana into the Union was approved December 11th, 1816.

Mississippi, formed mostly from territory ceded by Georgia, April 24th, 1802, and by South Carolina, August 9th, 1787, was admitted December 10th, 1817. Congress established the territorial government April 7th, 1798. An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government was passed March 1st, 1817. A constitution was formed August 15th, 1817, and the State was admitted by act of Congress December 10th, 1817.

Illinois, formed from the Northwest Territory, was admitted December 3d, 1818. The Territory of Illinois was established February 3d, 1809. A memorial of the legislative council to be allowed to form a State government having been presented to the House of Representatives in January, 1818, an enabling act was passed April 18th. The constitution was formed August 26th, and the State was admitted by joint resolution December 3d, 1818.

Alabama, formed mostly from a part of the territory ceded to the United States by South Carolina and Georgia, was admitted December 14th, 1819. The eastern part of Mississippi

Territory was made a separate Territory, under the name of Alabama, by act of Congress, March 3d, 1817. Congress, having been memorialized, passed an enabling act March 2d, 1819, and a constitution and State government were formed August 2d, 1819. The State was admitted by joint resolution December 14th, 1819.

Maine was formed from a part of Massachusetts, and became a State March 15th, 1820. A project was formed as early as 1786 to erect a separate State from that part of Massachusetts known as the District of Maine, and a convention had once met at Portland to consider it. The plan was, however, abandoned for the time. On the 19th of June, 1819, the legislature of Massachusetts gave its consent to the formation of a new State, if the people of the district desired it, and would consent to certain conditions. This having been done, a convention formed a constitution October 29th, which was ratified by the people December 6th. A petition was then presented to Congress, and the State was admitted by an act passed March 3d, 1820, to take effect March 15th.

Representatives Allowed to New States.—Maine was the third State formed from a part of another. The others, Vermont and Kentucky, when admitted, were allowed two representatives each; but Maine was declared to be entitled to seven, Massachusetts having thirteen; Massachusetts had twenty before. The new States which had been Territories had each but one representative till the next census after its admission.

Missouri, formed from the Louisiana purchase, was admitted August 10th, 1821. As before stated, the act of March 26th, 1804, divided the territory purchased from France, known as the Louisiana purchase, into two territories. What is now the State of Missouri was a part of the northern territory, which was called the District of Louisiana. For about a year this was under the governor and judges of Indiana Territory. On the 3d of March, 1805, a separate government was

provided, and the name was changed to Territory of Louisiana. On the 4th of June, 1812, the name was changed to Missouri Territory. March 2d, 1819, the southern part was separated and erected into a new Territory, called Arkansas Territory. Congress having been memorialized to admit Missouri as a State into the Union, an act was passed March 6th, 1820, authorizing the formation of a constitution and State government. There was a division in Congress as to Missouri, as to whether it should be admitted with slavery. The enabling act was a compromise. It provided that Missouri might be admitted as a slave State, but that from all other parts of the Louisiana purchase lying north of the south line of Missouri —36° 30′ north latitude—slavery should be forever excluded. This act was known as the "Missouri Compromise."

On the 19th of July the people formed a constitution, which was laid before Congress November 16th. March 2d, 1821, a resolution providing for the admission of Missouri into the Union on a certain condition was approved. The condition having been accepted June 26th, 1821, the President issued a proclamation, August 10th, 1821, declaring the admission complete.[1]

Arkansas, formed out of part of the territory ceded by France in 1803, was admitted June 15th, 1836.

The Territory of Arkansas was established March 2d, 1819, having been taken from the Territory of Missouri. On the 30th of January, 1836, a constitution was formed by a convention, and this was laid before Congress March 1st, with a memorial asking admission into the Union. An act to admit was approved June 15th, 1836. There was no enabling act passed by Congress in the case of Arkansas. All the States admitted up to this time that had existed as Territories, except Tennessee, had been authorized by Congress to form

[1] The constitution of Missouri excluded from the State all free people of color. The condition imposed by Congress was that the legislature should declare by solemn act that no law should ever be passed to carry into effect that provision of the constitution.

constitutions and State governments. Tennessee claimed the right of admission under the deed of cession from North Carolina to the United States; and Arkansas claimed a like right, by virtue of the treaty with France ceding to the United States the province of Louisiana. This treaty provided that "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." It has been held by legal writers that the action of these Territories in forming constitutions and State governments without authority from Congress was irregular, and that Congress was not required to admit them at the time of application.

Michigan, formed from the Northwest Territory, was admitted January 26th, 1837.

The Territory of Michigan was formed from part of Indiana Territory January 11th, 1805. The legislative council, in accordance with a vote of the people, having memorialized Congress for admission into the Union, a bill was reported as an enabling act for that purpose in February, 1833; but, on account of the dispute between Ohio and Michigan as to boundaries, it was not passed. On the 6th of September, 1834, the legislative council of the Territory provided for taking the census, and, afterward, for forming a constitution. This constitution having been ratified by the people October 5th, 1835, a State government was organized. A copy of the constitution was then sent to the President, with a request for admission into the Union. As the southern boundary which Michigan had given in her constitution was south of the northern boundary of Ohio, she could not of course be received without a change. Strong opposition was made to receiving her at all without an enabling act; but finally an act of admission was passed, June 15th, 1836, admitting her on the condition that a convention of delegates, elected by the

people, should assent to the boundaries prescribed by Congress. This was done December 15th, 1836, and the State was admitted by act of Congress, approved January 26th, 1837.

Florida, March 3d, 1845.—Florida was formed out of the territory ceded by Spain to the United States by treaty of February 22d, 1819. It was admitted into the Union March 3d, 1845. A territorial government was established by act of Congress, March 30th, 1822. No enabling act was passed in the case of Florida. The convention which framed her constitution was called by the legislature of the Territory. She based her right to admission on the treaty with Spain, as Michigan had based hers on the ordinance of 1787, and Tennessee hers on the deed of cession from North Carolina. She applied for admission in February, 1839, presenting the proceedings of her convention, a constitution, etc., but she was not admitted till March 3d, 1845, as stated above.

Missouri, Arkansas, Michigan, and Florida each came into the Union with only one representative in Congress.

Texas.—The next State admitted was Texas, which came in by a joint resolution of Congress, approved December 29th, 1845. Texas, originally a part of Mexico, had become an independent republic. She declared her independence in 1835, and the United States recognized it in 1837. In 1840 Great Britain and France did the same. Mexico had never acknowledged the independence of Texas. A treaty for the annexation of Texas to the United States, negotiated by Mr. Calhoun, Secretary of State, was laid before the Senate early in 1844, but it was rejected by a large majority. The plan of annexation by joint resolution was then attempted, and the resolution was adopted in March, 1845. This required the assent of Texas, which was promptly given, and annexation was completed in December. Provision was made for the formation of four new States from the same territory, and the principle of the Missouri Compromise was made applicable to such States.

Two representatives in Congress were allowed. The case of Texas differs from all other new States in this, that before it became a State, being an independent republic, its people were in no respect subject to the government of the United States.

Iowa was the next of the new States admitted. Iowa was admitted December 28th, 1846, and was formed from a part of the Louisiana purchase.

Confusion has arisen as to the origin of this State, and some writers represent it as having been formed from the original territory of the United States. This confusion is owing to the fact that the Territory of Iowa was formed from that of Wisconsin, and this from that of Michigan; and as Michigan and Wisconsin were both formed from the Northwest Territory, the inference was natural that Iowa was also formed from that Territory.

Prior to the purchase of Louisiana, in 1803, the United States owned no territory west of the Mississippi. The Northwest Territory, organized by the Ordinance of 1787, embraced the territory northwest of the Ohio and east of the Mississippi. This territory was divided in 1800, and the western part was called the Territory of Indiana. In 1805 the Territory of Michigan was established, and in 1809 that of Illinois. The Territory of Michigan, at that time, included the territory north of Ohio, Indiana, and Illinois, and east of the Mississippi. But, on the 28th of June, 1834, an act of Congress attached to the Territory of Michigan all the territory of the United States west of the Mississippi and north of the State of Missouri. This, of course, included what is now Iowa. On the 20th of April, 1836, the territorial government of Wisconsin was established. Iowa thus became a part of the Territory of Wisconsin. This Territory was divided, and the new Territory of Iowa was established on the 12th of June, 1838.

No enabling act was ever passed by Congress for Iowa. In February, 1841, a bill to that effect was reported to the House of Representatives, but it was not passed. Three years after, the President communicated to the Senate a memorial from the legislative assembly for admission into the Union. And on December 9th of the same year a memorial of a conven-

tion, with a copy of a constitution, was received in the Senate.

On the 3d of March, 1845, an act for the admission of Iowa was approved. This act required the assent of the people of Iowa to be given, after which the President might by proclamation announce the admission without further action on the part of Congress. This course, however, was not adopted. On the 18th of May, 1846, another constitution was formed, and on this second constitution the act of final admission was passed December 28th, 1846. Iowa was allowed two representatives.

Wisconsin was admitted May 29th, 1848. This State was formed from the Northwest Territory, making the fifth State, and thus completing the number provided for in the Ordinance of 1787. The others, as we have seen, are Ohio, Indiana, Illinois, and Michigan.

The Territory of Wisconsin was established April 20th, 1836, having been formed from that of Michigan. On the 20th of March, 1845, a resolution of the legislative council of Wisconsin, asking that provision be made for taking a census and holding a convention to form a State constitution, was presented in the Senate. An enabling act was approved August 6th, 1846. A State constitution was formed December 16th, 1846, and in January it was presented in Congress. On the 3d of March, 1847, an act for the admission of Wisconsin was passed ; the admission to be on the condition of the assent of the qualified voters to the constitution. The President was to announce the assent by proclamation, and then the admission was to be complete.

But, as in the case of Iowa, this plan was not carried out. The constitution was rejected by the people in 1847, and another convention was held and another constitution was adopted February 1st, 1848. This was ratified by the people. The preamble of the act of admission, approved May 29th, 1848, recognized this constitution as republican, making it

thus the basis of admission. The boundaries of the State were the same as prescribed in the enabling act of August 6th, 1846. That act gave the State two representatives till the next census, but the act of admission provided for three from and after March 4th, 1849.

California was admitted into the Union September 9th, 1850. It was formed from a part of the territory ceded to the United States by Mexico in the treaty made at Guadalupe Hidalgo, February 2d, 1848. By this treaty the United States obtained, besides California, what is now Nevada, Utah, most of New Mexico and Arizona (a strip in the south not being acquired till 1853), and portions of Wyoming, Colorado, Kansas, and Oklahoma.[1] California never had a territorial government. Most of the new States existed previously as Territories; four—Maine, Vermont, Kentucky, and West Virginia—were formed from parts of other States; one—Texas—was an independent republic, and was annexed to the United States by joint resolution of Congress. California differed from all the rest in her previous condition. Efforts were made in Congress to pass acts to establish a territorial government, but they all failed.

General Riley, the military governor, called a convention which on the 13th of October, 1849, formed a constitution. This was ratified by the people on the 13th of November, and the State was admitted September 9th, 1850. Two representatives were allowed her.

Minnesota was admitted May 11th, 1858. This State, lying on both sides of the Mississippi River, was formed in part from the Louisiana purchase and in part from the Northwest Territory. A territorial government was established March 3d, 1849. On the 26th of February, 1857, Congress authorized the people of the Territory to form a constitution and

[1] Parts of New Mexico, Colorado, Kansas, and Oklahoma were claimed by Texas, but this State relinquished her claim upon payment of $10,000,000 by the national government.

State government preparatory to their admission into the Union. A convention was held accordingly, and a constitution was formed August 29th, which was ratified by the people October 13th.

"The two political parties in the convention, Republicans and Democrats, disagreeing as to the organization of the body, formed separate conventions which ran parallel courses, each claiming to be the only legitimate convention. Two constitutions were reported, and it seemed that the people were to be embarrassed by the necessity of choosing between them, when, towards the close of their respective sessions, a conference was had between the two bodies, and a single constitution reported to and adopted by them both. It seems clear that this mode of organizing has decided advantages. A constitution acceptable to all political parties in a State must be free from partisan legislation; must contain, as it ought, only measures whose policy or expediency had been thoroughly settled in the public mind." [1]

This constitution was approved by Congress, and the State was admitted May 11th, 1858, with two representatives.

Oregon was admitted February 14th, 1859. Some deem it a part of the Louisiana purchase, but the better view is that that province embraced only the Mississippi valley. Early in the nineteenth century there were several different claimants of the country between California and Alaska—the United States, Great Britain, and Spain being the principal ones. Our claim rested chiefly on the discovery of the Columbia River and our early occupation. In 1819 Spain relinquished to us her claim to all north of the 42d parallel, and in 1846 Great Britain did the same as to all south of the 49th parallel. There is thus a fourfold title: the right by discovery, and by cessions from France (if France had any claim), Spain, and Great Britain. A territorial government was established August 14th, 1848, over "that part of the territory of the United States which lies west of the summit of the Rocky Mountains, north of the 42d degree of north latitude.'

[1] Jameson, page 263.

The northern part was erected into the Territory of Washington March 2d, 1853.

A convention was called by the legislature of the Territory of Oregon to meet in August, 1857, and in September a constitution was formed, which was submitted to the people for ratification, and approved. No enabling act had been passed by Congress in her case. She was declared entitled to one representative.

Kansas was admitted January 29th, 1861. It was formed almost wholly from a part of the Louisiana purchase, but the southwest corner formerly belonged to Mexico. It was organized as a Territory May 30th, 1854, by the act known as the Kansas-Nebraska Act—the two Territories being established by the same act. This act caused great excitement throughout the country. The Missouri Compromise of 1820 was understood to mean that there should be no more slave States north of the parallel of 36° 30′. This had been reaffirmed in the joint resolution of March 1st, 1845, for annexing Texas, and again in the act defining the boundaries of Texas and establishing the Territory of New Mexico, passed September 9th, 1850.

Missouri Compromise Repealed.—Kansas and Nebraska were both north of the parallel of 36° 30′, but the act by which they were organized as Territories provided that when they should be admitted as States into the Union they should be received with or without slavery, as their constitutions might prescribe at the time of their admission. The same act declared the Missouri Compromise inoperative and void.

On the 23d of October, 1855, a convention at Topeka formed a constitution. This was a spontaneous movement on the part of those known as the Free State party, not having been called either by the governor or the territorial legislature. The constitution was submitted to the people and ratified by a large majority of those who voted—the other party not voting. Under this constitution an election of State officers was held January 15th, 1856, and a State government was organized. President Pierce

issued a proclamation against this government in February, and on the 4th of July its legislature was forcibly dispersed by an officer of the United States army.

The territorial legislature also provided for a convention, which assembled at Lecompton, September 5th, 1857, and framed the constitution known as the Lecompton constitution. This established slavery. Application for admission into the Union was then made, but the bill as introduced was not passed. A bill for conditional admission was passed May 4th, 1858, which required that the constitution, with certain propositions from Congress, should be submitted to the people. This was done on the 3d of August of that year, when the constitution was rejected by ten thousand majority.

Another convention was held at Wyandotte, and a constitution was formed in July, 1859.[1] This was submitted to the people October 4th, and ratified by a majority of four thousand. Under this constitution Kansas was admitted into the Union January 29th, 1861. She was declared to be entitled to one representative.

West Virginia was admitted into the Union June 19th, 1863. It was formed from a part of Virginia. The circumstances of the formation of this new State were peculiar. On the 17th of April, 1861, a body of men, styling themselves the convention of Virginia, passed an ordinance of secession from the United States. Most of the State officers joined the movement, carrying with them the public funds and the archives of the State. The territory was still a part of the national domain, though mostly in the possession of people hostile to the United States. The loyal people, whom alone the Constitution or government of the United States could recognize as the people of Virginia, were without a State government.

In this exigency they took the reconstruction of the State government into their own hands. They called a convention, which met at Wheeling June 13th, 1861, and passed an ordi-

[1] The act of May 4th, 1858, provided for another convention in case the constitution then to be submitted to the people should be rejected. Thus for the Wyandotte constitution there was an enabling act, which was not the case as to the others.

nance providing for the appointment of a governor and other State officers, and requiring the general assembly to meet July 1st. This convention also passed an ordinance to provide for the formation of a new State out of a portion of the territory of Virginia. The people within the prescribed boundaries were to vote on the question of a new State, and polls were also to be opened for the election of delegates to a convention to form a constitution. The vote having been largely in favor of a new State, the convention met at Wheeling November 26th, and framed a constitution which was adopted by the people.

May 13th, 1862, the reconstructed legislature of Virginia gave consent to the formation of a new State. December 31st Congress passed an act admitting West Virginia, provided the people should ratify a proposed change in the constitution. That being done, the President was to issue a proclamation, and the admission was to be complete sixty days after the proclamation. The convention adopted the change February 17th, 1863. The vote of the people on the ratification of the amended constitution was taken March 26th, 1863, being largely in its favor. On the 20th of April the proclamation was issued, and sixty days thereafter—June 19th, 1863—West Virginia became one of the United States. She was allowed three representatives in Congress.

In this case there was the consent of three parties—the State from which the new State was formed, Congress, and the people of the district set off. If it were doubted whether the body that met at Wheeling in July, 1861, was the general assembly of Virginia, the action of the United States government in its three departments must be deemed conclusive.

Nevada was admitted into the Union October 31st, 1864, by the proclamation of the President. It was formed from a part of the territory obtained from Mexico by the treaty of February 2d, 1848. It was organized as a Territory March 2d, 1861. In 1863 a constitution was formed and submitted

to the people, but rejected. On the 21st of March, 1864, an enabling act was passed by Congress, which provided for the holding of a convention on the first Monday of July. If a constitution should be framed, it was to be submitted to the people on the second Tuesday of October. The President of the United States, on being notified that such constitution had been ratified by the people, was to issue his proclamation without further act of Congress. Nevada was allowed one representative.

Nebraska was admitted March 1st, 1867. This was a part of the Louisiana purchase. It was organized as a Territory May 30th, 1854. An enabling act was passed for it April 19th, 1864. In January, 1867, Congress passed an act approving its constitution, and admitting it on condition that there should be no denial of the elective franchise or of other rights because of race or color. The act, though vetoed by President Johnson, became a law. Nebraska became a State by proclamation of the President, March 1st, 1867. It had one representative.

Colorado became a State August 1st, 1876. A part of it came from Louisiana and a part from the territory acquired from Mexico. It was organized as a Territory February 28th, 1861. A bill to admit it as a State was passed in January, 1867, but was vetoed by the President. An enabling act was passed March 3d, 1875, and a constitution was formed. This was ratified by the people in July, 1876, and the President was duly notified thereof. It then, by the terms of the enabling act, became his duty to declare the State admitted into the Union. It came in with one representative.

North Dakota and **South Dakota** were admitted November 2d, 1889, being divisions of the Territory of Dakota, which was organized March 2d, 1861. It was included in the French cession of 1803. The inhabitants voted in favor of a division of the Territory in 1887. The enabling act was passed by Congress February 22d, 1889. In accordance with

this act, in each division of Dakota a constitutional convention met on July 4th, and the constitutions adopted by them were ratified by popular vote on October 1st.

Montana was admitted November 8th, 1889, having been organized as a Territory May 26th, 1864. It is chiefly from Louisiana, that part west of the Rocky Mountains being originally a part of Oregon. The enabling act that was passed by Congress, February 22d, 1889, applied not only to the Dakotas but also to Montana and Washington ; under it a constitution was adopted by a convention that met July 4th at Helena, and this was ratified by the people of Montana on October 1st.

Washington was admitted November 11th, 1889. It was originally a part of Oregon, and was organized as a separate Territory March 2d, 1853. In accordance with the enabling act of February 22d, 1889, above described, a constitution was framed by a convention that met at Olympia, and this was accepted by the people October 1st.

Idaho was admitted by act of Congress July 3d, 1890. It was originally a part of Oregon, and was organized as a Territory March 3d, 1863. A constitution was formed in July and adopted by the people of the Territory in November, 1889. Congress had not passed any enabling act for Idaho ; by the act of July 3d it accepted and ratified the constitution already in existence.

Wyoming was admitted by act of Congress July 10th, 1890. It is chiefly from Louisiana, but partly from Mexico and Oregon. It was made a Territory July 25th, 1868. A constitution was framed in September, adopted by the people in November, 1889, and ratified by Congress in the act of admission. There was no enabling act in the case of Wyoming. Congress retains exclusive legislative rights over Yellowstone Park, but legal process of the State may be served within the Park.

Utah was admitted January 4th, 1896, after adopting a

constitution forbidding polygamy. It is from the Mexican cession, and was organized as a Territory September 9th, 1850. An enabling act was passed in July, 1894. The constitution was framed in March and adopted by the people in November, 1895.

Each of the States admitted in 1889, 1890, and 1896 came in with one representative, except South Dakota, which was allowed two.

Oklahoma was admitted November 16, 1907. It was formed mostly from part of the Louisiana purchase. This region was for many years reserved as a home for Indians, and was called Indian Territory. A small portion was opened to settlement by white men on April 22, 1889. On May 2, 1890, the western half of Indian Territory was organized as the Territory of Oklahoma. An enabling act for a new State, to include both Oklahoma and what was left of Indian Territory, was passed June 16, 1906. The constitution was framed in 1907, and ratified by vote of the people September 17. The enabling act provided that the new State should have five representatives.

New Mexico was admitted January 6, 1912. It is from the Mexican cessions. New Mexico was organized as a Territory by act of September 9, 1850, and was reduced to its present area by the erection of Arizona Territory in 1863. On June 16, 1906, Congress passed an enabling act for the formation of a new State to include both New Mexico and Arizona, provided that a majority of the voters in each Territory should consent; but this project was defeated by the adverse vote of Arizona. A new enabling act for both Territories to form separate States was passed June 20, 1910. The constitution of New Mexico was framed in November, 1910, and was accepted by vote of the people January 21, 1911. A substitute article on amendments was proposed by Congress August 21, 1911, and accepted by the people at the first election of State officers, November 7, 1911. By the provisions of the enabling act, New Mexico was allowed two representatives in Congress.

Arizona was admitted February 14, 1912. It is from the Mexican cessions. Arizona Territory was created February 24, 1863. The enabling act was part of the same law (June 20, 1910) as the enabling act of New Mexico. The constitution of Arizona was framed in December, 1910, and accepted by vote of the people February 9, 1911. Congress, however, objected to the clause providing for the recall of officers by popular vote, and by resolution of August 21, 1911, made the admission of the State conditional on the people's acceptance of a substitute clause excepting judges from liability to recall. This clause was accepted by the people at the first election of State officers, December 12, 1911. The new State came in with one representative.

Classification of States.—The forty-eight States may be arranged with regard to their *origin*, as follows: Original States, *thirteen*—New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia. States formed wholly or mainly from territory originally belonging to the United States, or to individual States, *twelve*—Vermont, Maine, Kentucky, Tennessee, Mississippi, Alabama, Ohio, Indiana, Illinois, Michigan, Wisconsin, West Virginia. States formed wholly or mainly from territory purchased by the United States, *twelve*—Florida, Louisiana, Arkansas, Missouri, Iowa, Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Montana, Oklahoma. States from conquered territory, *five*—California, Nevada, Utah, New Mexico, Arizona; from territory secured by discovery and cession, *three*—Oregon, Washington, Idaho; of mixed origin, *two*—Minnesota and Colorado; existing before as an independent republic, *one*—Texas.

If the thirty-five new States be arranged according to the *mode of admission*, they would be grouped as follows: *Four* were formed from other States—Vermont, Maine, Kentucky, West Virginia. *One* was annexed as a State—Texas. *One*

other had not previously been a Territory—California. The remaining *twenty-nine* had had territorial governments prior to their admission as States. As to these twenty-nine, there were enabling acts in *twenty-one* cases, and no enabling acts in *eight*.

TERRITORIES AND DEPENDENCIES.

Alaska.—Besides the States, the continental area of the United States includes the District of Columbia (pages 143–147), and the District of Alaska purchased from Russia in 1867.

Alaska is not a fully organized Territory. It was made a customs collection district in 1868, and in 1884 was provided with a governor and a judge. It now has a governor, four judges, district attorneys, and marshals appointed by the President with the approval of the Senate. It elects a delegate to Congress, but it has no legislature. When it was acquired, the laws of Oregon were extended over it as far as applicable. In 1898, however, a new criminal code, and in 1900 a new civil code, were enacted for its government.

Hawaii is the only organized Territory; like Alaska it is part of the United States, and elects a delegate to Congress. It was organized June 14th, 1900, under the provisions of an act of Congress approved April 30th. The territorial legislature consists of a senate and a house of representatives; the members of both these houses are elected by vote of only those citizens who can read and write English or Hawaiian. The governor, secretary, judges, attorney, and marshal are appointed by the President with the approval of the Senate. The governor has the power to veto bills, but they may be passed over his veto by two thirds of the members of each house of the legislature. Other officers are appointed by the governor with the approval of the Hawaiian senate, or are chosen in accordance with the laws of the Territory.

Previous History.—The Hawaiian Islands were united into one native kingdom about the beginning of the nineteenth century, and in 1829 the independence of this kingdom was recognized by the United States. A constitutional government was established there, and from time to time improved. But in January, 1893, as the result of a reactionary policy on

the part of the reigning queen, Liliuokalani, there occurred a bloodless revolution in which the queen was deposed, and a provisional government was set up, pending annexation to the United States. The queen protested against annexation, and claimed that the revolution had been brought about partly through the aid of the United States minister, who had summoned a landing party of United States marines to protect American property in the Hawaiian capital at the time of the uprising, and had established a protectorate, pending instructions from Washington. President Cleveland, who now came into power in our country, withdrew from the Senate a treaty which had been submitted to it by President Harrison, providing for annexation, and he also ended the United States protectorate. The party in power in the islands soon established the Republic of Hawaii; and after an unsuccessful effort to recover her throne, Liliuokalani formally relinquished her rights as sovereign.

The Hawaiian Islands were finally annexed by the terms of a joint resolution of Congress, signed by President McKinley July 7th, 1898. The formal transfer of sovereignty took place August 12th, 1898; but, under the direction of the President, the former officers of the Republic of Hawaii continued to administer the government there until the establishment of the Territory.

Porto Rico was among the islands ceded to the United States by Spain, as a result of the war of 1898. The island had been invaded by our troops, but hostilities were suspended before the conquest was completed, and the rest of the island was occupied by our army without resistance. It was governed by the President, chiefly through the War Department, until May 1st, 1900, when the act of Congress approved April 12th went into effect. This act established a civil government for Porto Rico, but did not make Porto Rico a Territory, nor did it extend the Constitution and laws of the United States to this island. Indeed, by the same act of April 12th, Congress provided a revenue for Porto Rico by imposing temporary duties on the trade of the island with the United States, and laying a duty on coffee imported into the island, though coffee was then admitted into the United States free of duty; but if Porto Rico were considered to be part of the United States, these provisions

would have been impossible, by Article I., Section 8, Clause 1 of the Constitution, which says "all duties, imposts, and excises shall be uniform throughout the United States." The Supreme Court has declared the act constitutional.

Porto Rico has a governor appointed by the President and Senate for four years, with an annual salary of $8,000. There is an executive council of eleven members (five of whom must be natives of Porto Rico), appointed in the same manner. This council, and a house of delegates elected biennially by the people, form the two houses of the legislative assembly. The judges of the supreme and district courts are appointed by the President and Senate. There is no delegate to Congress, but there is a resident commissioner to the United States, who represents Porto Rico in transactions with all departments of our government.

The Philippine Islands.—From the time of their discovery by Magellan in 1521 until 1898, with one brief interruption in 1762, the Philippine Islands were recognized by civilized nations as belonging to Spain. In the war of 1898 the Spanish fleet in that colony was destroyed, and the capital city of Manila was captured, by the forces of the United States. By the terms of the treaty of Paris, in 1899 Spain ceded the Philippines to the United States, and the United States paid Spain $20,000,000. For many months after that time the government of the islands was purely a military one, as some of the Filipinos renewed against the United States the rebellion previously directed against Spain. In March, 1900, however, a commission of five prominent men was appointed by the President to go to the islands and establish a civil government there. By the act of July 1, 1902, Congress established a Philippine government somewhat like that of Porto Rico.

Guam was ceded to the United States by Spain, by the treaty ratified in 1899. It is governed by the President through the Navy Department, the supreme local official being a navy officer who acts as governor.

Tutuila.—The Samoan islands, after 1881, were the subject of several treaties between Great Britain, Germany, and the United States—the

countries having the greatest interests in the islands. Their object was to maintain peace and secure the rights of foreigners, and yet leave the Samoan kingdom independent and neutral. Disorder recurred, however, at the election of each new king, and finally to secure a more efficient government, the three powers, early in 1900, ratified a treaty by which the islands were divided between Germany and the United States, Tutuila and a few smaller islands falling to our share. These are governed in much the same way as Guam.

The Panama Canal Zone was placed under the control of the United States by a treaty with Panama in 1904. It is a strip ten miles wide across the isthmus. It is governed by a Commission appointed by the President.

Cuba.—Our government over Cuba, 1899–1902 and 1906–1909, was anomalous. Cuba is an independent republic, but is to some degree under the protection of the United States.

In the Cuban resolutions, which soon resulted in war with Spain in 1898, Congress solemnly disclaimed any intention of exercising sovereignty over the island for any longer period than should be necessary to establish order and a stable government to be maintained by the Cubans. Our occupation of Cuba, therefore, was purely military.

On September 15th, 1900, in accordance with an order of the War Department, the people of the several provinces of Cuba elected delegates to a constitutional convention which met November 5th and after much discussion adopted a constitution somewhat like that of the United States. In March, 1901, Congress authorized the President to withdraw our forces from the island as soon as there should be established a government under a constitution which should give the United States the right to intervene for the preservation of the independence and stable government of Cuba, and should provide for the selling or leasing of lands for coaling or naval stations to the United States, and should contain certain other provisions. In June the Cuban Convention accepted these conditions. Then, elections having been duly held under the Cuban Constitution, the government of the island was formally handed over to the Cuban officers, May 20, 1902.

In 1906 the president of Cuba invited our intervention because of a threatened revolution. A provisional governor appointed by President Roosevelt, and supported by United States troops, administered the Cuban government till peace and order were restored. In January, 1909, the island was again turned over to newly elected Cuban officers.

CHAPTER VII.

Practical Operation of the Constitution.

In this chapter will be given some account of the workings of the government under the Constitution. The more important offices in the different departments will be mentioned, with the duties, etc., of the various officers.

THE LEGISLATIVE DEPARTMENT.

The Constitution provides, as has been seen, for a Congress, composed of a Senate and a House of Representatives. The senators are elected by the State legislatures, and hold their office for six years; the representatives are elected by the people of their several districts for the term of two years. The members of the two houses receive the same compensation, $7,500 a year, with mileage at the rate of twenty cents a mile (ten cents each way), estimated by the nearest route usually traveled in going to and returning from each regular session.

THE SENATE.

The Vice President of the United States is the president of the Senate. He gives the casting vote when the Senate is equally divided, and signs all bills and resolutions that are passed by the Senate. His salary was originally $5,000. In 1853 it was raised to $8,000, in 1873 to $10,000, in 1874 reduced to $8,000, and in 1907 raised to $12,000.

The list of Vice Presidents will be found in the Appendix.

There is no provision in the Constitution or by statute

for filling a vacancy in the office of Vice President. When the Vice President becomes President, the Senate chooses a president *pro tempore*, but this does not constitute him Vice President.

THE HOUSE OF REPRESENTATIVES.

The presiding officer of the House of Representatives, called the speaker, is chosen by the House. The term had its origin when legislative bodies were addressed by the chief executive, and their presiding officer was expected to respond. As he spoke for the body he was called the speaker. He signs all bills and joint resolutions passed by the House, decides questions of order, and under the rules of the House appoints some temporary committees. He is required to vote in case of ballot, and he may vote on other occasions. His salary is $12,000. For list of speakers, see Appendix.

PRACTICAL LEGISLATION.

In each house there are standing committees, to which are referred the various matters of business for examination and report. The members of each committee—from three to twenty-one in number—are chosen by ballot, although before 1911 the House committees were appointed by the speaker.

The Senate has about seventy standing committees and the House about fifty-five, and there are besides a number of select committees and joint committees. The principal committees are those on Ways and Means, Appropriations, Judiciary, Foreign Affairs, Elections, Banking and Currency, Coinage, Interstate and Foreign Commerce, Railways and Canals, Claims, Public Lands, Insular Affairs, District of Columbia, Indian Affairs, Education, Immigration and Naturalization, Agriculture, Manufactures, Labor, Mines and Mining,

Pensions, Patents, Rivers and Harbors, Public Buildings and Grounds, and the committees on the several Executive Departments. Not all of these committees, however, exist in both houses under the same name. As "all bills for raising revenue" must originate in the House, the Senate has no Committee on Ways and Means. This committee is regarded as the most important in the House, and the place of chairman is held to be next to that of speaker in honor.

The House often resolves itself into a *Committee of the Whole,* when the speaker leaves the chair and a chairman is appointed. This gives opportunity for free discussion without the restraint of the strict rules of the House. When this committee closes its session, in technical terms *rises,* the speaker resumes the chair, and the chairman of the committee reports its proceedings.

A bill introduced into either house is supposed to be *read* three times, and at each reading to be formally acted upon by the house. But in practice the first reading is by the title only, and also the third, if no objection is made. In the House of Representatives the bill is referred to the appropriate committee, and ordered to be printed, before the first reading ; but in the Senate the reference to the committee is made after the second reading. When a bill has been reported from the committee, after the second reading, it is ordered to be *engrossed* and read the third time, when the vote is taken upon its passage. Before this, however, the bill may be amended in various ways. Having passed both houses, the bill is *enrolled* on parchment, and carefully examined by the Committee on Enrolled Bills. After the bill has been reported by this committee it is signed by the speaker of the House and the president of the Senate, and sent to the President of the United States for his signature.

When a bill has been passed over the veto of the President by the requisite majority in each house, the published statutes give certificates to that effect, signed by the clerk of

the House of Representatives and the secretary of the Senate, in addition to the official signatures of the speaker of the House and the president of the Senate.

If a bill has been presented to the President for his approval and not returned by him within the time prescribed by the Constitution, a note to that effect is appended by the Department of State.

A bill passed in the usual way and approved by the President, has the word "Approved" and the date appended.

THE EXECUTIVE DEPARTMENT.

The executive power is vested in a single officer, styled the President of the United States. We have seen that he must be thirty-five years of age, a native-born citizen, and a resident for fourteen years in the United States. He is elected for a period of four years by electors chosen by the people in the several States. His term commences on the 4th of March. The salary, which can not be increased or diminished during the period for which he shall have been elected, was $25,000 a year till the 4th of March, 1873, when Congress raised it to $50,000. In 1909 it was made $75,000.

The President may be reëlected, and ten have been elected for a second term.

The following is a list of the Presidents :

George Washington, of Virginia, was unanimously elected the first President. Though the term properly began on the 4th of March, 1789, he was not sworn into office until the 30th of April. He was reëlected unanimously, and thus held the office eight years, till March 4th, 1797.

John Adams, of Massachusetts, was elected, in 1796, over Thomas Jefferson, of Virginia; his term expired March 4th, 1801.

Thomas Jefferson, of Virginia, was elected by the House

of Representatives. John Adams was the opposing candidate before the people, but in the House the friends of Mr. Adams voted for Aaron Burr. Mr. Jefferson was elected on the thirty-sixth ballot, and Mr. Burr became Vice President. Mr. Jefferson was elected for a second term, his competitor being Charles C. Pinckney, of South Carolina. Mr. Jefferson was President from 1801 to 1809. (See page 173.)

James Madison, of Virginia, was elected over C. C. Pinckney in 1808, and again, in 1812, over De Witt Clinton, of New York, his term ending March 4th, 1817.

James Monroe, also of Virginia, was elected, in 1816, over Rufus King, of New York, and reëlected, in 1820, almost unanimously. He served till March 4th, 1825.

John Quincy Adams, of Massachusetts, was elected by the House of Representatives in February, 1825. The electoral votes were given to Andrew Jackson, J. Q. Adams, W. H. Crawford, and Henry Clay. The House, from the three highest candidates, chose Mr. Adams, who received the votes of thirteen States; seven voting for Mr. Jackson, and four for Mr. Crawford. Mr. Adams served the full term from March 4th, 1825, to March 4th, 1829.

Andrew Jackson, of Tennessee, was elected, in 1828, over Mr. Adams, and again, in 1832, over Henry Clay, of Kentucky, and others. He held the office for eight years, to March 4th, 1837.

Martin Van Buren, of New York, was the successful candidate, in 1836, over William Henry Harrison, of Ohio, and others. His term ended March 4th, 1841.

William Henry Harrison was elected, in 1840, over Mr. Van Buren. He entered upon his duties March 4th, 1841, and died April 4th of the same year. John Tyler, of Virginia, the Vice President, thus became President. He took the oath of office April 6th, and served the remainder of the term to March 4th, 1845.

James K. Polk, of Tennessee, was elected, in 1844, over

Henry Clay, and served four years, to March 5th, 1849. (March 4th, in 1849, was Sunday.)

Zachary Taylor, of Louisiana, was elected over Lewis Cass, of Michigan, in 1848. He entered upon his duties March 5th, 1849, and died July 9th, 1850. Millard Fillmore, of New York, the Vice President, took the oath of office July 10th, and served till March 4th, 1853.

Franklin Pierce, of New Hampshire, was elected, in 1852, over Winfield Scott, and held the office one term, from March 4th, 1853, to March 4th, 1857.

James Buchanan, of Pennsylvania, was elected, in 1856, over John C. Frémont, of California, and Millard Fillmore. He served one term, to March 4th, 1861.

Abraham Lincoln, of Illinois, was elected, in 1860, over John C. Breckenridge, Stephen A. Douglas, and John Bell. In 1864 he was reëlected over George B. McClellan, but he died April 15th, 1865. Andrew Johnson, of Tennessee, the Vice President, was sworn in as President April 15th, and served the remainder of the term, to March 4th, 1869.

Ulysses S. Grant, of Illinois, was elected, in 1868, over Horatio Seymour, of New York, and reëlected in 1872. His competitor in 1872, Horace Greeley, of New York, died November 29th. President Grant's second term expired March 5th, 1877.

Rutherford B. Hayes, of Ohio, was elected, in 1876, over Samuel J. Tilden, of New York. He served till March 4th, 1881.

James A. Garfield, of Ohio, was elected, in 1880, over Winfield S. Hancock, of Pennsylvania. He died September 19th, 1881, and Chester A. Arthur, of New York, the Vice President, took the oath of office September 20th, and served till March 4th, 1885.

Grover Cleveland, of New York, was elected, in 1884, over James G. Blaine, of Maine. He served from March 4th, 1885, to March 4th, 1889.

Benjamin Harrison, of Indiana, was elected, in 1888,[1] over Grover Cleveland. He served one term, to March 4th, 1893.

Grover Cleveland, of New York, was elected for the second time, in 1892,[1] over Benjamin Harrison, of Indiana, and James B. Weaver, of Iowa. He served till March 4th, 1897.

William McKinley, of Ohio, was elected, in 1896,[1] and reëlected in 1900,[1] over William J. Bryan, of Nebraska. He died September 14th, 1901, and Theodore Roosevelt, of New York, the Vice President, was then sworn in as President.

Theodore Roosevelt was elected, in 1904,[1] over Alton B. Parker, of New York. He served till March 4th, 1909.

William H. Taft, of Ohio, was elected, in 1908,[1] over William J. Bryan.

THE EXECUTIVE DEPARTMENTS.

The Constitution contemplates "heads of departments." The departments are not defined in the Constitution, but have been established by law. There are now nine of these, viz., The Departments of State, of the Treasury, of War, of Justice, of the Post Office, of the Navy, of the Interior, of Agriculture, of Commerce and Labor. The heads of the departments are known collectively as "the Cabinet," and with two exceptions are called Secretaries. The head of the Post Office Department is called the Postmaster-General, and the head of the Department of Justice is the Attorney-General. The salary of each head of a department is $12,000.

Some of the departments are subdivided into subordinate departments known as *bureaus*. Thus in the Department of the Interior there are the Bureau of Pensions, the Patent Office, the Bureau of Education, etc.

[1] The years 1888, 1892, etc., are the dates of the election of the electors. The votes of the electors were cast in 1889, 1893, etc. Previous to 1888 the electors cast their votes on the first Wednesday in December; but since then on the second Monday in January following their election (see page 177).

THE DEPARTMENT OF STATE.

In January, 1781, prior to the adoption of the Constitution, Congress had established the Department of Foreign Affairs, to be under the direction of an officer styled "Secretary for the Department of Foreign Affairs." R. R. Livingston was the first Secretary. In July, 1789, an executive department was established under the same designation, which in September was changed to that of the Department of State.

The office of the Secretary of State is usually regarded as next in importance to that of the President. The duties of the office are not very clearly defined by law, but are largely such as come from the instructions of the President. The Secretary is to "perform such duties as shall from time to time be enjoined on or intrusted to him by the President, relative to correspondences, commissions, or instructions to or with public ministers or consuls from the United States."

He preserves the originals of all treaties, public documents, laws, and correspondence with foreign powers. He keeps the seal of the United States, and affixes it to all commissions which are signed by the President. He authenticates all proclamations of the President. He furnishes copies of records and papers in his office, authenticated under the seal of the department.

He has charge of foreign relations, and conducts the correspondence with foreign ministers, and with our ministers and consuls. He is the organ of communication of the President with the governors of the several States.

He issues passports to citizens wishing to visit foreign countries. He issues warrants for the extradition of criminals who are to be delivered up to foreign governments in accordance with treaty stipulations. He presents to the President all foreign ministers.

The salary of the Secretary of State is now $12,000 a year. In 1789 it was established at $3,500. In 1799 it was made $5,000; in 1819, $6,000; in 1853, $8,000; in 1873, $10,000; in 1874, $8,000; and in 1907, $12,000.

For list of Secretaries of State, see Appendix.

In 1853 an Assistant Secretary was authorized; in 1866, a second; and in 1874, a third. The routine work of the State Department is carried on by a number of bureaus.

Ambassadors and Other Public Ministers.—All persons who are sent abroad to represent our government are connected with the Department of State. These representatives are of different grades, though it is not easy to draw the lines that distinguish them. They include the following: Ambassador, Envoy Extraordinary and Minister Plenipotentiary, Minister Resident, and Chargé d'Affaires. In most of the embassies or legations there are also one or more secretaries, and perhaps an interpreter. Until 1893 our government never designated any of its ministers as Ambassadors; but in that year an act was passed authorizing the President to give to our ministers in any country such of the above titles as that country gives its ministers in the United States.

Ambassadors are now sent to ten or more of the most important governments, such as Great Britain, Russia, German Empire, France, Mexico, and Japan. They receive $17,500 per annum.

Envoys Extraordinary and Ministers Plenipotentiary are sent to some thirty governments, but in a few cases there is only one such minister for two or three different countries. Their salaries are $10,000 or $12,000.

Ministers Resident are inferior in rank to the Envoy Extraordinary and Minister Plenipotentiary. Their duties, however, are the same. The difference is principally in the relative importance of the governments to which they are sent. Their salaries range from $5,000 to $10,000. There are only a few of them.

The term *Commissioner* has sometimes been applied by our government to diplomatic representatives. Commissioners were formerly sent to China, Mexico, and other places. At present no regular diplomatic officer is styled a Commissioner. The title is often applied to those sent on special service, as in the case of the Commissioners who helped to frame the Treaty of Washington.

Chargés d'Affaires are rarely sent at present. The rank is below that of the Minister Resident. The term would imply a kind of minister *ad interim*, rather than a permanent officer. Formerly, however, a majority of our diplomatic representatives were styled Chargés d'Affaires. Thus, in 1849, there were eight Ministers Plenipotentiary, one Minister Resident (to Turkey), and sixteen Chargés d'Affaires.

The *Secretary of Legation* is the secretary, or clerk, to a foreign embassy. In the most important embassies there are two or even three Secretaries of Legation. Sometimes, through the death or removal of the minister, his duties are devolved temporarily on the (first) Secretary of Legation.

Consuls are commercial rather than diplomatic agents. Their principal duty is to watch over the interests of our commerce in the cities of the different countries, and to protect the rights of seamen.

In execution of this general duty, they hold the ship's papers of all American vessels while in port; they hear complaints of seamen; they reclaim deserters; they appoint examiners for vessels reported unseaworthy; they cause mutinous sailors to be arrested and sent home for trial; they extend relief to destitute seamen; they take possession of the personal property of American citizens dying abroad; they take measures for the saving of stranded vessels and their cargoes; they report the condition of business in their respective localities, etc.

The United States has about sixty Consuls-General, some of whom are also Ministers Resident. There are also about two hundred and fifty Consuls and many Consular Agents. Until the year 1855 these officers were compensated by fees. In that year the diplomatic and consular systems were remodeled, and salaries were paid in all the more important ports. In 1906 the consular service was again improved, and all Consuls and Consuls-General now receive salaries.

Fees are collected, but they are accounted for to the government. The salaries vary from $2,000 to $12,000 per annum. Some Consular Agents are paid by fees.

THE TREASURY DEPARTMENT.

A Treasury Department was established by the Continental Congress early in 1781, the chief officer being styled the Superintendent of Finance. Robert Morris was the first Superintendent.

The present department was established in 1789. Its head is the Secretary of the Treasury. The original act provided also for a Comptroller, an Auditor, a Treasurer, a Register, and an Assistant to the Secretary.

It is the duty of the Secretary to digest and prepare plans for the improvement and management of the revenue, and for the support of public credit; to superintend the collection of the revenue; to decide on the forms of keeping accounts and making returns; to grant, under certain limitations, all warrants for money to be issued from the treasury in pursuance of appropriations by law; and, generally, to perform all such services relative to the finances as shall be required. He also has control of certain branches of the public service not directly connected with the finances.

The power and influence of this department have increased with the growth of the country in wealth and population, and have been still more enhanced by the great increase of the national debt, the establishment of the system of internal revenue, the issue of a legal tender paper currency, and the establishment of the national banking system.

The salary of the Secretary of the Treasury has been the same as that of the Secretary of State: in 1789, $3,500; in 1799, $5,000; in 1819, $6,000; in 1853, $8,000; in 1873, $10,000; in 1874, $8,000; in 1907, $12,000.

For a list of Secretaries, see Appendix.

There are three Assistant Secretaries.

Bureaus in the Treasury Department.—The work in this department is performed, under the general supervision of the Secretary of the Treasury and his Assistants, by various officers, distributed in bureaus as follows: offices of the Comptroller, each of the six Auditors, Treasurer, Register, Comptroller of the Currency, Commissioner of Internal Revenue, the Mint, Bureau of Engraving and Printing, Public Health and Marine Hospital Service, etc.

The office of *Comptroller* was created in 1789; in 1817 a Second Comptroller was provided for, but in 1894 this officer was replaced by an Assistant Comptroller. The Comptroller decides appeals from the settlements made by the Auditors; revises the decisions of the Auditors as to the construction of statutes; superintends the recovery of debts due to the United States; preserves the accounts that are finally adjusted, together with their vouchers and certificates; and countersigns all warrants drawn by the Secretary of the Treasury. Having the final adjudication of accounts involving vast sums of money, the Comptroller holds a most responsible office, requiring great capacity as well as the strictest integrity.

The Auditors.—The act of 1789, establishing a Treasury Department, provided for a single Auditor, who was to receive all public accounts, to certify the balance, and transmit the accounts, with the vouchers and certificates, to the Comptroller for his decision. In 1817 four additional Auditors were authorized, and the work was divided among them. In 1836 a Sixth Auditor was added. By act of 1894 the designations of the Auditors were changed and their duties were altered.

The First Auditor is called Auditor for the Treasury Department. He examines all accounts of salaries and expenses of the office of the Secretary of the Treasury and all bureaus under his direction; he keeps all accounts relating to the customs service, the internal revenue, the public debt, etc.

The Second Auditor is called Auditor for the War Department. He ex-

amines the accounts of that department, including all its bureaus and offices.

The Third Auditor is called Auditor for the Interior Department. He examines and settles all claims and accounts arising in the Department of the Interior ; these include among others the pension accounts.

The Fourth Auditor is called Auditor for the Navy Department, and audits all accounts relating to that department.

The Fifth Auditor is called Auditor for the State and other Departments. He examines the accounts of the Secretary of State, the Attorney-General, the Secretary of Agriculture, and the Secretary of Commerce and Labor, and of all bureaus under their direction; of the diplomatic and consular service, of the judiciary, of the executive office, of the Court of Claims, of the Smithsonian Institution, of the territorial governments, of the Senate and House of Representatives, of the Public Printer, Library of Congress, Botanic Garden, and of all bureaus and commissions not within the jurisdiction of any department.

The Sixth Auditor is called Auditor for the Post Office Department, and audits all accounts pertaining to that department. He superintends the collection of debts and penalties due to the United States on account of the postal service, and is the custodian of all contracts of the Post Office Department.

The office of *Treasurer* was created in 1789. It is the Treasurer's duty to receive and keep the moneys of the United States, and to disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller and recorded by the Register. In 1846 certain rooms and vaults in the new Treasury buildings were appropriated to the use of the Treasurer ; these, with other apartments provided as places of deposit of the public money, were constituted "the Treasury of the United States." Provision was made for the appointment of four Assistant Treasurers—at New York, Boston, Charleston, and St. Louis—and the treasurers of the mints at Philadelphia and New Orleans were also to act as such. In 1900 there were Assistant Treasurers at New York, Boston, St. Louis, Philadelphia, New Orleans, Baltimore, Cincinnati, Chicago, and San Francisco. When the national banks were established, in 1863, the Secretary of

the Treasury was authorized to designate them as depositories of public moneys, except receipts from customs, and they could be employed as financial agents of the government.

The signature of the Treasurer is on all the treasury notes and gold and silver certificates issued by the United States, and was on all the postal and fractional currency while issued.

The office of *Register* was created in 1789, but the duties of the office were much altered in 1894. The Register signs all stocks and bonds of the United States, and superintends their issue. He signs all treasury notes and gold and silver certificates. He receives, examines, and registers all redeemed notes and securities of the United States.

In 1863 a separate bureau was established in the Treasury Department, called the *Bureau of Currency*, to be under the direction of an officer denominated the *Comptroller of the Currency*. The act establishing this bureau was the "Act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," passed February 25th, 1863, and subsequently superseded by an act for the same purpose, passed June 3d, 1864.

It is the duty of the Comptroller of the Currency to see that all banking associations established under this act are organized and managed according to law; to provide the banks with notes for circulation; to send agents to examine into their condition; to close up the affairs of such as fail to pay their notes; to report annually to Congress their condition, etc.

In 1910 there were more than 7,000 national banks in operation in the United States. The capital stock of all was over $1,000,000,000, and the bank notes in circulation exceeded $680,000,000.

Bureau of Internal Revenue.—The act establishing this bureau, the head of which is styled *Commissioner of Internal Revenue*, was passed in 1862. A similar office was created in 1813, and abolished in 1817. The duties of the office are the

collection of internal revenue and the enforcement of the internal revenue laws. The act of 1862 provided for the appointment of an *assessor* and a *collector* in each collection district, and for twenty-five *supervisors*. The office of assessor ceased July 1st, 1873, and the duties were devolved on the collectors.

In the collection of customs many persons are employed in connection with the different customhouses. The chief officer is the *collector*. The *naval officer* and the *surveyor* have important duties, which are not very clearly indicated by their names. They are appointed only in the larger ports. From 1849 to 1894 there was at Washington a Commissioner of Customs who had certain duties in connection with the accounts of collectors and other officers; but in 1894 this office was abolished and the duties were transferred to the Comptroller's office.

By act of February 12th, 1873, the *Mint of the United States* was established as a bureau of the Treasury Department, the chief officer to be styled the *Director of the Mint*. He is charged with the general supervision of all mints and assay offices. There are mints at Philadelphia, San Francisco, Carson, New Orleans, and Denver. Assay offices are stations for the deposit of ore, where it is assayed and paid for, and melted into bars, but not coined.

The Bureau of Engraving and Printing was established in 1874. It designs, engraves, and prints postage stamps, the internal revenue stamps, the national bank notes, the notes, bonds, and securities of the United States, treasury drafts and checks, etc.

The *Supervising Architect* has the general charge of planning and constructing all United States buildings, as customhouses, courthouses, post offices, marine hospitals, mints, etc.

The *Surgeon-General of the Public Health and Marine Hospital Service* superintends the operation of the marine hospitals, and has charge of the quarantine service.

THE WAR DEPARTMENT

The office of *Secretary of War* was created in 1789. Such a department existed before the adoption of the Constitution, Benjamin Lincoln having been appointed Secretary of War and Marine in February, 1781; and "an ordinance for ascertaining the powers and duties of the Secretary of War" was passed by the Continental Congress in January, 1785. Up to 1798 these duties extended to naval as well as military affairs. An Assistant Secretary was authorized March 5th, 1890.

The salary of the Secretary of War was for thirty years $500 less than that of the Secretaries of State and the Treasury. It was $3,000 in 1789, $4,500 in 1799, $6,000 in 1819, $8,000 in 1853, $10,000 in 1873, $8,000 in 1874, and $12,000 in 1907.

For list of Secretaries, see Appendix.

The War Department controls the Army. The make-up of the line of the army is given on page 137; the staff consists of a General Staff Corps, under the Chief of Staff, and of the following bureaus, which will be understood from their titles: Office of the Adjutant General, Office of the Inspector General, Office of the Judge-Advocate General, Office of the Quartermaster General, Office of the Commissary General, Office of the Surgeon General, Office of the Paymaster General, Office of the Chief of Engineers, Office of the Chief of Ordnance, Office of the Chief Signal Officer, Bureau of Insular Affairs, Board of Engineers for Rivers and Harbors. The heads of these bureaus, as a rule, have the rank of brigadier general.

The Military Academy at West Point, in the State of New York, is connected with the War Department. It was established in 1802. At first, provision was made for only ten cadets, but in 1812 Congress authorized the number to be increased to two hundred and fifty. The present corps of cadets consists of one from each congressional district, one

from each Territory, one from the District of Columbia, two from each State at large, and forty from the United States at large; these are all appointed by the President.[1] They must be between the ages of seventeen and twenty-two, and must pledge themselves to serve eight years unless sooner discharged.

For various reasons there are many vacancies in the corps of cadets. To increase the number actually receiving instruction, an act of 1910 permits, for six years from that date, the appointment of the successor of any cadet who has completed three years of his course.

The superintendent and most of the instructors are officers of the army. The Academy is wholly supported by the government, an allowance being made to each cadet sufficient to pay his entire expenses of clothing, board, etc.

Salaries.— The army officers receive yearly pay as follows:

Lieutenant General	$11,000	Captain, not mounted	$2,400
Major General	8,000	1st Lieut., mounted	2,150
Brigadier General	6,000	1st Lieut., not mounted	2,000
Colonel	4,000	2d Lieut., mounted	1,850
Lieutenant Colonel	3,500	2d Lieut., not mounted	1,700
Major	3,000	Chaplain	2,000
Captain, mounted	2,550		

To each commissioned officer below the rank of brigadier general the pay is increased ten per centum for every term of five years' service, but the increase is not to exceed forty per centum.[2] Officers retired from service receive seventy-five per centum of the pay (salary and increase) of the rank upon which they are retired. By a law of 1882 all officers are retired at the age of sixty-four. The pay of privates is fifteen dollars a month, for the first enlistment period of three years,

[1] So the statute requires. Practically each congressman recommends one to the Secretary of War, and this officer nominates to the President. Of late years the selection is frequently made by competitive examination, and with good results.

[2] The maximum pay of colonels, lieutenant colonels, and majors is still further limited— that of colonel to $5,000, that of lieutenant colonel to $4,500, and that of majors to $4,000.

with three dollars a month added for the second enlistment, three more for the third, if reënlisted within three months, and one more for the fourth, fifth, sixth, and seventh enlistments, if reënlisted within three months. An enlisted man who has served thirty years as a private or non-commissioned officer may be retired on three fourths pay. The officers are paid monthly.

THE DEPARTMENT OF JUSTICE.

This department was created by act of Congress, June 22d, 1870. The Attorney-General is the head of it. While the Department of Justice was not established till 1870, the office of Attorney-General was created in 1789; and this officer, though without a "department," has always been recognized as a member of the Cabinet.

The act of September 24th, 1789, made it his duty to prosecute and conduct all suits in the Supreme Court in which the United States should be concerned, and to give his advice and opinion upon questions of law when required by the President, or when requested by the heads of any of the departments touching any matters concerning their departments.

In 1861 he was charged with the general superintendence of the attorneys and marshals of all the judicial districts in the United States and the Territories. He was also authorized to employ counsel to aid district attorneys in the discharge of their duties. He examines the title of lands which the government proposes to purchase for forts, dockyards, customhouses, or other public purposes.

Though the Attorney-General had a seat in the Cabinet from the first, his salary was much below the others. It was fixed, in 1789, at $1,500, and not till 1850 was it made equal to that of the other members of the Cabinet—$6,000. In 1853 it was made $8,000; in 1873, $10,000; in 1874, $8,000; and in 1907, $12,000.

For list of Attorneys-General, see Appendix.

In 1868 two Assistant Attorneys-General were provided for, to be appointed by the President. The act of 1870 continued these offices, but created the office of Solicitor-General, who ranks next to the Attorney-General. The act also transferred to the Department of Justice the Solicitor of the Treasury and his assistants, and the Solicitor of Internal Revenue from the Treasury Department, the Naval Solicitor from that of the Navy, and the Examiner of Claims from the Department of State. All these officers were to be appointed by the President and Senate. Since then a number of changes and additions have been made, and now the officers are as shown in the table below.

The Attorney-General makes an annual report to Congress of the business of his department, and any other matters appertaining thereto that he may deem proper, including the statistics of crime under the laws of the United States, and, as far as practicable, under the laws of the several States. Under the direction of the Attorney-General, the officers of this department give all opinions and render all services necessary to enable the President and the officers of the executive department to discharge their duties. The Secretaries of the various departments are not to employ counsel at the public expense, but to call upon the Department of Justice for the legal service they need.

The Department of Justice, which is one of the executive departments, must not be confounded with the judicial department, which is one of the three great divisions of the government and coördinate with the executive department.

The following are the principal officers in the Department of Justice:

Attorney-General	Salary $12,000
Solicitor-General	10,000
Assistant to the Attorney-General	7,000
Seven Assistant Attorneys-General, each	5,000
Assistant Attorney-General of the Post Office Department	5,000
Solicitor of Internal Revenue	5,000
Solicitor for the Department of State	5,000
Solicitor of the Treasury	5,000
Solicitor of the Department of Commerce and Labor	5,000

POST OFFICE DEPARTMENT.

There were arrangements for carrying letters by mail before the colonies separated from the mother country. Dr. Benjamin Franklin had the general superintendence under the British government, and in July, 1775, he was appointed by the Second Continental Congress "Postmaster-General of the United Colonies." When the Constitution went into operation, Congress, by act of September 22d, 1789, provided for the "temporary establishment of the Post Office," the regulations to be "the same as they last were under the resolutions and ordinances of the late Congress."

In 1792 an act was passed to establish a General Post Office. There was to be a Postmaster-General, who should have power to appoint an Assistant, and deputy postmasters at all places where such should be found necessary; he was also "to superintend the business of the department" in all the duties that should be assigned to it. This act was, indeed, limited to two years, but in 1794 a similar one was enacted, which had no limitation of time. We may say, therefore, that the Post Office Department has been in operation from the first Congress under the Constitution.[1] An act to revise, consolidate, and amend the statutes relating to the Post Office Department, containing three hundred and twenty-seven sections, was passed June 8th, 1872; and many laws relating to the postal service have been passed since then.

The salary of the Postmaster-General was $2,000 in 1792, $3,000 in 1799, $4,000 in 1819, $6,000 in 1827, $8,000 in 1853, $10,000 in 1873, $8,000 in 1874, and $12,000 in 1907.

[1] Mr. Gillet, in his work on *The Federal Government*, says: "There has never been any statute establishing a Post Office Department. . . . It is first spoken of as a Post Office Department in the title of an act in 1825." But that title itself is, "An Act to reduce into one the several acts establishing and regulating the Post Office Department." This very title thus asserts that previous acts had established such a department. We have seen above that the General Post Office was called a "department" in the act of 1792. An act of March 3d, 1801, speaks "of the several departments of the Treasury, of War, of the Navy, and of the General Post Office."

It is said that the Postmaster-General did not attend the meetings of the Cabinet prior to the administration of President Jackson, who invited Mr. Barry to be present at their meetings. The practice has been continued from that time.

For the list of Postmasters-General, see Appendix.

There are four Assistant Postmasters-General. The Postmaster-General appointed assistants until 1853; since then the appointment has been by the President and Senate.

The *First Assistant Postmaster-General* has general charge of post offices and postmasters and their appointment and instruction; the adjustment of salaries of postmasters; the city free delivery system.

The *Second Assistant Postmaster-General* has charge of the transportation of all mails.

The *Third Assistant Postmaster-General* has charge of the finances of the department; provides stamps, stamped envelopes, and postal cards; supervises the money order system and the registered letter system; and controls the business relating to rates of postage and classification of mail matter.

The *Fourth Assistant Postmaster-General* has charge of the rural free delivery system, and of the treatment of undelivered mail matter (dead letters); supplies postmasters with blanks, stationery, etc.; and has charge of the making of post-route maps.

The office of each Assistant Postmaster-General is organized as follows:

That of the First Assistant: (1) the Division of Postmasters' Appointments; (2) the Division of Salaries and Allowances; (3) the Division of City Delivery.

That of the Second Assistant: (1) the Division of Railway Mail Service; (2) the Division of Foreign Mails; (3) the Division of Railway Adjustments; (4) the Division of Equipment; (5) the Division of Miscellaneous Transportation.

That of the Third Assistant: (1) the Division of Finance; (2) the Division of Stamps; (3) the Division of Money Orders; (4) the Division of

Registered Mails; (5) the Division of Classification; (6) the Division of Redemption.

That of the Fourth Assistant: (1) the Division of Rural Mails; (2) the Division of Supplies; (3) the Division of Dead Letters; (4) the Division of Topography.

THE DEPARTMENT OF THE NAVY.

This department was established by act of Congress, April 30th, 1798, its chief officer being styled the Secretary of the Navy.

In 1861 an Assistant Secretary was authorized, but the office expired March 4th, 1869. It was again authorized July 11th, 1890.

For list of Secretaries, see Appendix.

The salary of the Secretary of the Navy was at first $3,000. In 1799 it was made $4,500; in 1819, $6,000; in 1853, $8,000; in 1873, $10,000; in 1874, $8,000; and in 1907, $12,000.

Bureaus.—By act of July 5th, 1862, there were established eight bureaus in the Navy Department, for each of which a chief was to be appointed from the list of the officers of the navy by the President. The names and duties of some of the bureaus have been altered by later acts, and in 1911 one of them (the Bureau of Equipment) was abolished.

The Bureau of Yards and Docks.—Vessels are built and repaired at navy yards, of which the government has eight, viz., at Kittery, Me.; Charlestown, Mass.; Brooklyn, N. Y.;[1] League Island, Pa.; Washington, D. C.; Norfolk, Va.; Puget Sound, Wash.; and Mare Island, Cal. Besides these, there are naval stations at Newport, R. I.; Key West, Fla.; Pensacola, Fla.; Port Royal, S. C.; Charleston, S. C.; New Orleans, La.; San Francisco, Cal.; and in our island possessions. This bureau has charge of the construction and maintenance of all docks, piers,

[1] The navy yard at Kittery, Me., is the same as that known as the Portsmouth (N.H.) navy yard; the one at Brooklyn is known as the New York navy yard; and the one at Charlestown is often spoken of as at Boston. Both names, Boston and Charlestown, are applied to the same navy yard in the same statute—U. S. Statutes at Large, XVII., page 552.

buildings, etc., within the navy yards, and controls the general administration of the navy yards.

The Bureau of Navigation promulgates and enforces the Secretary's orders to the fleets and officers of the navy ; controls the Naval Academy and other naval schools ; and has charge of the enlistment and discharge of sailors. It keeps a record of the services of all ships, officers, and men, and prepares and enforces all tactics, drill books, and signal codes. It has supervision of the Hydrographic Office, the Nautical Almanac, and the Naval Observatory. The observatory was established in 1842 under the name of "Depot for Naval Charts and Instruments."

The Bureau of Ordnance.—To this bureau belongs the general charge of the manufacture and purchase of guns and ammunition of every kind, torpedoes, war explosives, etc. Under its direction experiments are made to test new species of ordnance and ammunition. It determines the armament and distribution of armor for war vessels.

The Bureau of Construction and Repair has charge of all that relates to planning, building, and repairing vessels, as distinct from their armament and the engines and machinery by which they are propelled.

The Bureau of Steam Engineering.—All that pertains to the steam machinery by which vessels are propelled and operated comes under the charge of this bureau.

The Bureau of Medicine and Surgery has charge of the naval hospitals, laboratories, and dispensaries, and furnishes all medical supplies for the department.

The Bureau of Supplies and Accounts provides clothing, provisions, and small stores for the navy.

Besides these bureaus there is the office of the *Judge-Advocate General,* who revises and records the proceedings of courts-martial and is the legal adviser of the department ; and the office of the *Commandant of the Marine Corps.*

The Naval Academy, which sustains to the navy the same relation which the Military Academy at West Point does to the army, seems not to have been established by an act of Congress, but to have been commenced by the Navy Department without formal legislation. The first action of Congress regarding it is found in the act making appropriations for the naval service, August 10th, 1846.[1] This provides

[1] Hon. George Bancroft was then Secretary of the Navy.

that of the money appropriated for "pay of the navy" and "contingent expenses enumerated," an amount not exceeding $28,200 may be expended under the direction of the Secretary of the Navy for repairs, improvements, and instruction at Fort Severn, Annapolis, Md. In March, 1847, a like sum was appropriated for the same purposes, "and for the purchase of land for the use of the naval school at that place, not exceeding twelve acres."

The students, who are called midshipmen, must be, when admitted, not under sixteen years of age nor over twenty. There may be four from each State, two from each congressional district, and two from each Territory, with five at large. The five are appointed by the President; the others are nominated to the Secretary of the Navy by the senators, representatives, and delegates in Congress.

The course embraces four years of study at the Academy. As soon as a midshipman finishes his course, the succeeding appointment may be made from his State or district or at large as the case may be. On graduation from the Academy the midshipmen are given commissions as ensigns in the Navy.

Salaries.—The yearly pay of officers of the navy is as follows:

	On Sea Duty.	On Shore Duty.
Admiral	$14,850	$13,500
Rear Admiral (First nine)	8,800	8,000
Rear Admiral (Second nine)	6,600	6,000
Captain	4,400	4,000
Commander	3,850	3,500
Lieutenant Commander	3,300	3,000
Lieutenant	2,640	2,400
Lieutenant (Junior Grade)	2,200	2,000
Ensign	1,870	1,700

In addition, ten per cent of salary is added, for every five years of service, to the pay of all officers below the rank of rear admiral. This addition is limited to forty per cent, and it is further provided that the pay (on shore duty) of captain

shall not exceed $5,000, of commander $4,500, and of lieutenant commander $4,000.

The act of March 3d, 1899, provided for the retirement of a certain number of officers each year, with the rank and seventy-five per cent of the sea pay of the next higher grade.

The pay of "seamen" in the navy is, for the first enlistment, $26.40 a month; of "ordinary seamen," $20.90; of "landsmen," $17.60. Larger pay is given on reënlistments.

The Marine Corps consists of officers and soldiers organized like the army, with a brigadier-general in command, but distributed among the vessels of the navy and wholly under the control of the Navy Department. The pay of officers and men is the same as in the army.

There are also under the control of the Navy Department a *Medical Corps*, a *Pay Corps*, many *Naval Constructors*, *Civil Engineers*, etc.

THE DEPARTMENT OF THE INTERIOR.

This department was established by act of Congress, March 3d, 1849. The act is entitled "An Act to establish the Home Department." A department was proposed under that name in 1789. The duties of the department relate to various offices which have been transferred to it from other departments. It is less homogeneous, therefore, than the others.

At its establishment the Patent Office and the Census Office were transferred to it from the Department of State; the Land Office, including the charge of Mines, from the Department of the Treasury; the charge of Indian affairs from the Department of War; the charge of Pensions from the Departments of War and the Navy; and the care of certain Public Buildings from the President. Subsequently it was charged with the duty of receiving and distributing certain public documents, and with certain duties relating to Territories,

which had been performed by the State Department. The "Department of Education," which was at first independent, has been made an office in this department.

The salary has been the same as the other Secretaries have received, being now $12,000. There are two Assistant Secretaries.

For list of Secretaries, see Appendix.

The Patent Office is under the superintendence of a Commissioner, who is assisted by an Assistant Commissioner. There is a large corps of examiners and other employees in the Patent Office. Besides the charge of this large force, the Commissioner has a large amount of judicial work to perform—in hearing and deciding cases relating to the issue of patents.

The Bureau of Pensions.—Provision was early made for the payment of pensions, but the office of Commissioner of Pensions was not created till March, 1835. This officer was to execute, under the direction of the Secretaries of War and the Navy, such duties in relation to the various pension laws as might be prescribed by the President. The office was created for two years, but extended from time to time. In 1849 it was transferred to the Department of the Interior and made permanent.

The Land Office.—The public lands of the United States which are for sale are under the care of an officer styled the Commissioner of the General Land Office. This office was created in 1812, and it was made the duty of the Commissioner to attend to various matters touching the public lands which had before that been transacted in the several departments of State, of the Treasury, and of War. The Land Office was placed in the Department of the Treasury till, on the creation of that of the Interior, in 1849, it was transferred to that department.

The first survey of public lands was made in 1786, under the land ordinance of 1785. The lands surveyed were in

southeastern Ohio, and are known as the "Seven Ranges." The survey was made under the direction of Thomas Hutchins, Geographer of the United States.

Besides a large corps of officers in Washington, the principal officers under the Commissioner are Surveyors General, Registers of Land Offices, and Receivers of Land Offices.

There are now seventeen *Surveyors General*—one in each surveying district.[1] Under their direction all the land is accurately surveyed and described, and thus prepared for sale. The United States system of surveys provides for the division of the lands into ranges, townships, sections, and fractions of sections. The ranges are bounded by meridian lines, six miles apart, and are numbered east and west from a principal meridian. These are divided into townships of six miles square, numbered north and south from a given parallel. Townships are divided into thirty-six sections of one mile square, or six hundred and forty acres. The sections are divided into quarters, which are again subdivided into eighths and sixteenths.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

The sections in a township are numbered, beginning at No. 1 in the northeast section, and proceeding west and east alternately, as indicated in the annexed diagram. The description of land is thus made exact to tracts of forty acres ; as the N. W. ¼ of the N. E. ¼ of Section 19, Town 27 North, Range 18 West.

By the ordinance of 1785, establishing the system of surveys by ranges and townships, the sections of a township were numbered from south to north, the southeast section being No. 1, and the northwest section being No. 36.

Registers are appointed in the several land districts, who receive applications for lands in their districts, file receipts

[1] In 1796 the office of Surveyor General was created, Rufus Putnam being the first incumbent. There was but one Surveyor General for a considerable period.

for payments, and, on the final payment, give to the purchaser a certificate which entitles him to a patent, *i.e.*, a deed from the United States. Formerly the patent was signed by the President, and countersigned by the Secretary of State ; after 1812 the patent was countersigned by the Commissioner. Since 1836 a secretary, appointed by the President, signs patents in his name, and they are countersigned by the Recorder.

The government price of land is one dollar and a quarter an acre, but the sale of mineral lands and other special kinds of land is regulated by special laws, and there are also several laws establishing different methods by which to acquire ordinary land.

The *Receiver* receives money or land-scrip from the purchaser, giving receipts therefor, which are passed over to the Register.

Office of Indian Affairs.—Until 1832 the business of the government relating to the Indians had been managed by the clerks in the War Department. In that year Congress authorized the President to appoint a Commissioner, who should, under the direction of the Secretary of War, have the general superintendence of all Indian affairs. Since 1849 the Secretary of the Interior has had charge. The Commissioner has the direction of the inspectors and a large number of agents, under whom are many teachers, mechanics, laborers, etc. Their work is at the various Indian reservations and schools throughout the country.

The Bureau of Education.—In 1867 "A Department of Education" was established at Washington, for the purpose of collecting statistics showing the condition and progress of education in the States and Territories, and of diffusing such information as might promote the cause of education throughout the country. In 1868 Congress enacted that "the Department of Education" should cease, and that there should be established and attached to the Department of the Interior an office to be denominated the Office of Education, the chief officer of which should be

styled the Commissioner of Education, who was to perform the duties before prescribed.

The Director of the Geological Survey has charge of the classification of the public lands and the examination of their geological structure and products; the preparation of topographical and geological maps; the determination of the water supply of the United States.

The Director of the Reclamation Service has charge of the survey, construction, and operation of the government irrigation works in arid States, authorized by the act of June 17th, 1902. The work of this bureau is of vast importance. The cost of the irrigation works is repaid by the purchasers of the lands irrigated, and the money is then available for new works.

The Director of the Bureau of Mines investigates the methods of mining, especially in relation to the safety of miners and the prevention of accidents.

THE DEPARTMENT OF AGRICULTURE.

In 1862 a "Department of Agriculture" was established at Washington, the object of which was to acquire and diffuse among the people useful information on subjects connected with agriculture. The chief officer was styled a Commissioner of Agriculture. Among other things it was provided that he should "receive and have charge of all the property of the agricultural division of the Patent Office in the Department of the Interior, including the fixtures and property of the propagating garden." For many years previous to 1862 the Patent Office Report was partly devoted to agricultural facts and statistics. In its subordinate capacity, this "Department of Agriculture" was often a source of confusion. In his message of 1871 the President speaks of it in one sentence as a "department" and in another as the "Agricultural Bureau."

In 1889 Congress raised this bureau to the full rank of an executive department, and thus gave its chief, the Secretary of Agriculture, a seat in the Cabinet of the President.

The act of 1889 made the salary of the Secretary the same as that of the other heads of departments, namely, $8,000; it also provided for an Assistant Secretary. In 1907 the Secretary's salary was made $12,000.

For list of Secretaries, see Appendix.

In the department there are organized the Weather Bureau, the Bureau of Animal Industry, and a number of other bureaus devoted to special branches of agricultural science; such as the Forest Service and the bureaus of Statistics, Chemistry, Plant Industry, Soils, Entomology, Biological Survey. The Bureau of Chemistry is also charged with the enforcement of the Pure Food Act of June 30th, 1906.

This department maintains agricultural experiment stations and coöperates with those which have been established in all the States for investigating agricultural problems, such as irrigation, animal diseases, the use of fertilizers, etc.

The Weather Bureau is an outgrowth of the Signal Service of the United States. Professor Cleveland Abbé, of the Cincinnati Observatory, began the publication of weather reports for the Cincinnati Chamber of Commerce in 1869. This led to a movement among commercial bodies in favor of the establishment of a systematic service in the United States, and in the act of February 9th, 1870, Congress provided for a system of weather observations, forecasts, and reports, through the Signal Service branch of the army. The work was carried on by this service until July 1st, 1891, when it was transferred to the Agricultural Department.

The Service began by supplying the principal cities with reports. In 1873 the International Bulletin was established. In 1878 there was begun the making and distribution of weather maps, indicating by drawings the approaching weather conditions in all sections of the United States, Canada, and the West Indies. The maps are based upon telegraphic reports sent out from Washington to all stations where such maps are issued; these reports summarize, and are based upon, reports sent twice each day to the Washington office from all parts of the territory covered by the maps. The maps are issued daily, and are prognostications for from one to two or three days in advance, according to weather conditions.

THE DEPARTMENT OF COMMERCE AND LABOR

In 1903 the Cabinet was enlarged by the establishment of a ninth executive department, of which the head is called the Secretary of Commerce and Labor. The duty of this department is "to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, the labor interests, and the transportation facilities of the United States."

The act of 1903 provided for an Assistant Secretary. The Secretary's salary was made $8,000 in 1903, and $12,000 in 1907.

For list of Secretaries, see Appendix.

The work of this department is for the most part divided among a number of bureaus, etc., of which only two, however, were created by the act of 1903, as follows:

The Bureau of Manufactures collects and publishes useful information concerning our manufacturing industries, and concerning markets for their products. Information gathered by the consular officers of the United States is furnished to this bureau by the Department of State.

The Bureau of Corporations is under the immediate control of a Commissioner of Corporations. Besides the publication of ordinary information and statistics concerning corporations engaged in interstate and foreign commerce, this bureau has important inquisitorial powers (see p. 96).

Two of the divisions of the Department of Commerce and Labor had existed independently before 1903, as follows:

The Commission on Fish and Fisheries—now called the *Bureau of Fisheries*—was established in 1871, with a Commissioner at its head. It propagates useful food fishes, investigates the causes of their decrease, and compiles statistics of fisheries. The work in Washington is subdivided among several divisions, and scattered over the country and along the coast are many Stations, each in the charge of a Superintendent.

The "Department of Labor"—now called the *Bureau of Labor*—was established in 1888, and is under the control of a Commissioner. Its work is to collect statistics regarding the condition of labor and laboring people, markets and wages, strikes, and other matters relating to labor questions in the United States. It publishes a Bulletin of great value.

The act of 1903 also transferred to this department a number of bureaus and offices that had previously been included in other departments; among these are the following:

The Bureau of Statistics publishes the statistics of our commerce, showing the amounts of imports and exports arranged in various ways.

The Bureau of the Census.—As the census is taken once in ten years, the office of Director (or Superintendent) was formerly not permanent, but it was made so in 1902. Besides making thorough preparation for future decennial censuses, this bureau collects certain statistics at shorter intervals.

The Bureau of Lighthouses superintends our lighthouses, light-vessels, beacons, buoys, etc.

The Commissioner of Navigation has charge of the commercial marine and merchant seamen, especially the registering of vessels and the collection of tonnage taxes. The steamboat inspection laws, however, are administered by another officer—the *Supervising Inspector-General.*

The Coast and Geodetic Survey prepares charts made from actual survey of the entire seacoast of the United States; it also investigates and reports on other matters of importance in ocean navigation.

The Bureau of Immigration and Naturalization supervises the execution of the immigration and naturalization laws, and collects statistics relative thereto.

The Bureau of Standards has the custody of the standard weights and measures of the United States, and makes comparisons and tests connected with them.

One bureau in this department has been created since 1903.

The Children's Bureau, established in 1912, investigates and reports upon the employment of children and other matters pertaining to their welfare.

INDEPENDENT COMMISSIONS, ETC.

Besides the nine great executive departments, the executive branch of the government includes the following:

Interstate Commerce Commission.—The history and duties of this commission are sufficiently treated on pages 93, 94. The terms of the commissioners are so arranged that the term of only one expires each year. The commission is therefore a continuous body. Not more than four of them can be appointed from the same political party.

The Civil Service Commission. — For the history and duties of this commission, see pages 191–193.

The Government Printing Office.—The Public Printer is the officer in charge of this large division of the public service. He appoints the officers and employees of the Printing Office (subject to the Civil Service Act), and purchases all necessary machinery and material. This office is charged with printing all public documents, the Congressional Record, etc.

THE JUDICIAL DEPARTMENT.

CHIEF JUSTICES OF THE SUPREME COURT.

A full account of the United States courts has been given in a former part of this work.

The following is a list of Chief Justices of the Supreme Court of the United States:

JOHN JAY, New York, appointed September 26th, 1789. He was confirmed Envoy Extraordinary to England, April 19th, 1794. Resigned as Chief Justice.

JOHN RUTLEDGE, South Carolina, appointed July 1st, 1795, in the recess of the Senate; presided at the August term of the court. Rejected by the Senate, December 15th, 1795.[1]

OLIVER ELLSWORTH, Connecticut, appointed March 4th, 1796. Appointed Envoy Extraordinary and Minister Plenipotentiary to France, February 27th, 1799. Resigned as Chief Justice.[2]

JOHN MARSHALL, Virginia, appointed January 31st, 1801. He held the office until his death, July 6th, 1835.

ROGER B. TANEY, Maryland, appointed March 15th, 1836. He presided until his death, October 12th, 1864.

SALMON P. CHASE, Ohio, appointed December 6th, 1864. Died in office, May 7th, 1873.

[1] William Cushing, Massachusetts, then an Associate Justice, was appointed by the President and Senate January 27th, 1796, but declined. He continued to serve as Associate till his death in 1810.

[2] John Jay, New York, was appointed by the President and Senate December 19th, 1800, but declined.

Morrison R. Waite, Ohio, appointed January 21st, 1874. Died in office, March 23d, 1888.

Melville W. Fuller, Illinois, appointed April 30th, 1888. Died in office, July 4th, 1910.

Edward D. White, Louisiana, appointed December 12, 1910.

For a list of the Associate Justices, see Appendix.

The United States is divided into nine judicial Circuits, each of which has two or more Circuit Judges, and to each one of which a Justice of the Supreme Court is allotted by order of that court. The Circuits are as follows:

1st. Maine, Massachusetts, New Hampshire, Rhode Island.

2d. Connecticut, New York, Vermont.

3d. Pennsylvania, New Jersey, Delaware.

4th. Maryland, West Virginia, Virginia, North Carolina, South Carolina.

5th. Georgia, Florida, Alabama, Mississippi, Louisiana, Texas.

6th. Ohio, Michigan, Kentucky, Tennessee.

7th. Indiana, Illinois, Wisconsin.

8th. Minnesota, Iowa, Missouri, Kansas, Arkansas, Nebraska, Colorado, North Dakota, South Dakota, Wyoming, Utah, Oklahoma, and New Mexico.

9th. California, Oregon, Nevada, Idaho, Montana, Washington, Arizona, Alaska, and Hawaii.

Each state constitutes one or more judicial Districts.

The salary of the Chief Justice of the Supreme Court is $15,000; that of each Associate Justice, $14,500. The Circuit Judges receive each $7,000, and the District Judges $6,000 each.

CHAPTER VIII.

The State Governments.

The Change from Colonies to States.—In Chapter VI. an account has been given of the new States which have been admitted to the Union since the adoption of the Constitution. The thirteen original States were colonies until the Declaration of Independence. By that act the individual colonies were transformed into States, and the thirteen United Colonies assumed their position as a nation, under the name of the United States. The colonies had exercised some of the powers of government, while they acknowledged a common allegiance to Great Britain. "By the Declaration of Independence the sovereignty of the thirteen colonies passed from the crown to the people dwelling in them, not as an aggregate body, but as forming States endowed with the functions necessary for their separate existence; also, States in Union."[1]

The nation began its existence on the 4th day of July, 1776; and on the same day each of the thirteen colonies was transformed into a State—became an integral part of the nation. Each of the *new* States became such, when, having adopted a constitution, it was admitted into the Union by Congress. But the old thirteen did not become States by the formation of a constitution nor by a Congressional vote of admission. They were made States by the Declaration of Independence. No one of the thirteen was a State prior to that day, though a few of them had established temporary forms

[1] Frothingham, page 561.

of government by the recommendation of Congress. Each was a State from that day, though some formed no State constitutions until months, and, in some cases, years had elapsed. Massachusetts remained under her colonial charter till 1780, Connecticut till 1818, and Rhode Island till 1842.

Early Action of Some of the Colonies.—In the latter part of 1775 Congress had recommended to New Hampshire, South Carolina, and Virginia to modify their local governments, to "continue during the dispute with Great Britain." And in May, 1776, a like recommendation was made to "the several colonies where no governments sufficient to the exigencies of their affairs had been established." In accordance with these recommendations New Hampshire, South Carolina, Virginia, and New Jersey—all being royal colonies—provided themselves with governments adapted to their necessities. But, in at least three of these four cases, the governments were expressly declared to be temporary, to continue until the unhappy differences between Great Britain and America should be settled.

Of the body that took this action in Virginia in 1776, Mr. Jefferson says: "They received in their creation no powers but what were given to every legislature before or since. They could not, therefore, pass an act transcendent to the powers of other legislatures." And of the instrument itself he says: "It pretends to no higher authority than the other ordinances of the same session." Such instruments could hardly be called *constitutions*.

Including the four already mentioned, the thirteen local governments were modified, or established, as follows:

New Hampshire,	January 5, 1776.
South Carolina,	March 26, 1776.
Virginia,	June 29, 1776.
New Jersey,	July 2, 1776.
Delaware,	September 20, 1776.
Pennsylvania,	September 28, 1776.

Maryland,	November 8, 1776.
North Carolina,	December 18, 1776.
Georgia,	February 5, 1777.
New York,	April 20, 1777.
Massachusetts,	March 2, 1780.
Connecticut,	September 16, 1818.
Rhode Island,	November 23, 1842.

Most of the States have altered their constitutions, some of them a number of times. Connecticut and Rhode Island had no other constitutions than their colonial charters till 1818 and 1842 ; and the constitutions then adopted still remain. The constitution of 1820 of Massachusetts is still in force, though it has been frequently amended.

The State Constitutions resemble one another in their general provisions, while they differ in particulars. THE CONSTITUTION OF OHIO, adopted in 1851, may be taken as fairly illustrating the general principles of these instruments. It now contains seventeen articles, as follows:

I. Bill of Rights.
II. Legislative.
III. Executive.
IV. Judicial.
V. Elective Franchise.
VI. Education.
VII. Public Institutions.
VIII. Public Debt and Public Works.
IX. Militia.
X. County and Township Organizations.
XI. Apportionment: (*a*) Legislative; (*b*) Judicial.
XII. Finance and Taxation.
XIII. Corporations.
XIV. Jurisprudence.
XV. Miscellaneous.
XVI. Amendments.
XVII. Elections.

The Bill of Rights has twenty sections. These relate to the right of freedom and the protection of property, freedom of speech and of the press, the rights of conscience, etc. Under the last head we find the following, taken in substance from the Ordinance of 1787 : "Religion, morality, and knowledge being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

The twentieth section of the Bill of Rights is noteworthy as embodying in one sentence the substance of the ninth and tenth amendments of the Constitution of the United States. It is as follows : "This enumeration of rights shall not be construed to impair or deny others retained by the people ; and all powers, not herein delegated, remain with the people." It is sometimes said that while the powers of the United States government are delegated powers, those of the State governments are not delegated but inherent. The constitution of Ohio certainly gives no countenance to any such distinction. The people of Ohio say as explicitly as language can express that their State government possesses no powers not delegated in their constitution. In their relation to the people, the general government and the State government are precisely alike. Each government is one of delegated powers, and one as much so as the other. In each case the powers are delegated by the people : to the State government by the people of the State, to the national government by the people of the United States.

The Legislative power is vested in a General Assembly, consisting of a senate and a house of representatives, the members to be chosen every alternate year on the Tuesday after the first Monday in November. The regular sessions commence on the first Monday of January of the odd years.

The normal number of representatives is one hundred, who

are distributed at the beginning of each decade among the counties in such manner as to equalize the representation. In practice a county may have one representative a part of a decade and two for the rest. And generally the whole number is a little more than the normal number. The normal number of senators is thirty-five, who are distributed in the same way as the representatives. The apportionment is made by the governor, auditor, and secretary of state.

A majority is a quorum in each house. The yeas and nays may be called at the desire of two members. The concurrence of a majority of all the members elected in each house is necessary to pass a bill, and (since 1903) that of two-thirds to pass it over the governor's veto. No bill shall contain more than one subject, which must be clearly expressed in its title. No new county shall contain less than 400 square miles, nor shall any county be reduced below that area, though a county of 100,000 inhabitants may be divided with the approval of a majority of voters in each division. The General Assembly can not grant a divorce or perform any judicial act not expressly authorized in the constitution.

The Executive Department consists of a governor, lieutenant governor, secretary of state, auditor, treasurer, and an attorney-general. They are elected by the people on the Tuesday after the first Monday in November; the auditor for four years and the others for two. Their terms commence on the second Monday of January after their election. The governor has power, after conviction, to grant reprieves and pardons. He was given the veto power by an amendment adopted in 1903. The order of executive succession in case of vacancy is: the lieutenant governor, the president of the senate, and the speaker of the house of representatives.

Other State officers, provided for by law, are a commissioner of common schools, a food and dairy commissioner, board of public works, adjutant general, superintendent of insurance, State board of agriculture, public service commission,

tax commission, board of administration, State board of health, etc. The school commissioner and the dairy and food commissioner are elected for two years, and the board of public works for four; the others are appointed.

The Judicial System proper consists of a supreme court, circuit courts, and courts of common pleas. There are also probate courts, one in each county, and justices of the peace in each township. The General Assembly may establish other courts inferior to the supreme court. This has been done in the larger cities.

There is one *Supreme Court*, with six judges. The State is divided into eight judicial *circuits*, with three judges in each circuit. There are ten judicial *districts*, each—excepting Hamilton County—divided into three subdivisions. There are six supreme judges, twenty-four circuit judges, and about ninety judges of the court of common pleas.

The *Probate Court* is a court of record, held by one judge, who is elected for four years by the voters of the county. As the term signifies, he has jurisdiction in the matter of wills and estates, the appointment of administrators and guardians, the settlement of their accounts, etc. Other jurisdiction may be given him by law, such as issuing marriage licenses, appointing school examiners, certain minor criminal cases, etc.

Justices of the Peace are elected for four years by the voters of the township. This is not a court of record, though the justice keeps a docket. Sometimes a jury is summoned, and cases involving more than a specified amount may be appealed to the court of common pleas.

The judges of the supreme court and those of the circuit courts and the courts of common pleas are chosen for six years. Judges may be removed from office by vote of two thirds of the elected members of each house of the General Assembly, formal complaint having been made, and full opportunity to be heard being given.

The Elective Franchise is limited to male[1] citizens of the United States of the age of twenty-one years who have resided in the State one year, and in the county, township, or ward, such time as may be provided by law. No idiot or insane person may vote. All elections must be by ballot. The General Assembly may exclude from voting or holding office for infamous crime.

About four fifths of the States, like Ohio, limit voting to citizens of the United States. It is to be regretted that this practice is not universal. (See page 100.)

Education.—In regard to education the constitution provides that the principal of all funds granted or entrusted to the State for educational and religious purposes shall forever be preserved inviolate, and the income faithfully applied to the specific objects of the grant. The General Assembly shall provide by taxation and otherwise for a thorough and efficient system of common schools throughout the State, but no religious sect or sects shall have any exclusive right to, or control of, any part of the school funds of the State. Though the office of school commissioner is not provided for in the constitution, it was established by law soon after the constitution went into effect. The income from school lands and most of the income from State school taxes is expended upon the elementary schools.

Public Institutions for the benefit of the insane, blind, deaf and dumb, must always be fostered and supported by the State. The directors of the penitentiary are to be appointed or elected as the General Assembly may direct; but the trustees of the benevolent and other State institutions are appointed by the governor and senate.

The Public Debt of the State may not exceed $750,000, except in case of insurrection or invasion. The credit of the State shall not be given or loaned to any individual associa-

[1] Women are permitted by law to vote and be voted for at elections of school directors or members of school boards.

tion, nor shall the State become a stockholder therein. The General Assembly can not authorize any county, city, town, or township to become a stockholder in, or loan its credit to, any association. A sinking fund is provided for, in order to pay the interest and principal of the State debt, and the auditor, secretary of state, and attorney-general are created a board under the style of "The Commissioners of the Sinking Fund."

Board of Public Works.—So long as the state has public works, as canals, needing superintendence, there shall be a Board of Public Works, consisting of three members, elected by the people.

The Militia is composed of male citizens, residents of the State, between the ages of eighteen and forty-five. The law exempts certain classes from military duty. The line officers are elected by those who are subject to military duty, in their respective districts, and all military officers are commissioned by the governor.

COUNTY AND TOWNSHIP ORGANIZATIONS.

Under this head the first section is: "The General Assembly shall provide by law for the election of such county and township officers as may be necessary." County officers are to be elected on the Tuesday after the first Monday in November, and township officers at such times as may be prescribed by law. The term of office can not exceed four years.

The organization of counties and townships is thus left almost entirely to the General Assembly, though incidental reference is made in the constitution to the sheriff and treasurer, as also to the county commissioners and the township trustees.

It has been seen that the government of a State, as a whole, is in the main like that of the United States. The General

Assembly with its senate and house of representatives is like Congress with its two houses; the different classes of State courts are similar to the national courts; and the governor, lieutenant governor, and other executive officers are like the President, Vice President, Secretaries, etc., of the United States government. But there is nothing in our general government to correspond to the county and township government in the States. It is in these that we find the peculiar character of our local government, and these, therefore, deserve a somewhat careful consideration.

COUNTY GOVERNMENT.

The State of Ohio, containing 41,060 square miles, is divided into 88 counties and 1,372 townships. The average area of a county is thus about 463 square miles, and its number of townships averages 15. The average area of a township in Ohio is a fraction under 30 square miles. According to the United States system of surveys a township contains 36 square miles; but in the Military District and the Western Reserve the townships are only five miles square, and in the Virginia Military District there is no regularity. Indeed, in most of the new States the civil townships often differ from the surveyed townships, as they are called.

All but one of the States are divided into counties,[1] but in some of the southern and southwestern States the counties are not divided into townships. There are divisions for voting or judicial purposes, smaller than counties and called by different names. Thus, in Tennessee, Meigs County has *civil districts,* numbered from 1 to 8; Henry County has twenty-five such, from 1 to 25. In Virginia and West Virginia they are called *magisterial districts;* as, "Union Magisterial District," in Wood County, West Virginia. In Mississippi each county is divided into five *beats,* sometimes with a specific

[1] Louisiana is divided, instead, into *parishes.*

name and sometimes with a number; as "Beat 1, Jefferson County." But in these States and in some others there are no townships as they are known in Ohio.

In the matter of local government there are two systems in the United States. In New England the *town*, answering to the civil township of Ohio, is the unit. In the Southern States the *county* is the unit. The system of Ohio and many other States is intermediate between these. It is neither the town system of the East nor the county system of the South. The county has more power than in New England, the township has less. No one has spoken more strongly in favor of the town system than Mr. Jefferson. He recommended the division of the counties of Virginia into wards of six miles square. "These wards," he said, "called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation."

The officers of the county are three commissioners, a judge of probate, clerk of the court of common pleas, auditor, treasurer, sheriff, prosecuting attorney, recorder, surveyor, coroner, infirmary directors. These are all elected by the people, the judge of probate for four years, and the others for two years. The treasurer and sheriff are not eligible for more than four years in six. There is no restriction as to the others.

The *commissioners* are the general guardians of the interests of the county. All the public property of the county is under their charge, the county buildings are erected and repaired under their direction, State and county roads are laid out and constructed, and bridges built by them. They have the power to levy taxes for these purposes, the maximum rate depending upon the amount of taxable property. The commissioners may change the boundaries of townships and form new ones. They can divide a township into election districts.

New roads are built or old ones altered on petition of those interested, and on report of viewers appointed by the commissioners. So township boundaries are altered on petition of those interested, and it is after a petition of a majority of voters that a township is divided into election districts.

The commissioners and the auditor are a county board of equalization to revise and equalize each year the assessments of personal property, and, upon complaint, of real estate; but they can not reduce the aggregate valuation of the county as determined by the State board. The commissioners and the surveyor are a quadrennial board of equalization to review and equalize the assessments of real estate, which is assessed every four years.

Most county officers make annual reports to the commissioners, but these report to the court of common pleas. A vacancy in the board of commissioners is filled by the probate judge, auditor, and recorder. The auditor, being *ex officio* secretary of the commissioners, keeps the records of their proceedings. Their regular meetings, which are quarterly, are held at his office, and must be conducted according to parliamentary law. It will be seen that the duties of the commissioners are of great responsibility, and the best men of the county should be selected for this office.

The office of *probate judge* has been considered under the head of the judicial system.

The *clerk of the court of common pleas* was called under the Territory the prothonotary, and was appointed by the governor. Under the first constitution each court appointed its own clerk for a period of seven years. Since 1851 the office has been elective. He preserves the papers, issues writs, and keeps the records of the circuit court as well as that of common pleas. The election returns of the county are made to him, so that he is in some sense the clerk of the county; though the auditor, who keeps the records of the commissioners, has much to do with preserving an account of the public business of the county.

The *auditor* receives the returns of the assessors, keeps a complete schedule of the taxable property, with its value, and apportions the taxes among the taxpayers of the county. He prepares the list called the tax-duplicate for the treasurer, whose chief duty it is to collect the taxes. The auditor draws orders on the treasurer, and no money is paid without his order. The efficiency of the commissioners depends in considerable degree on the auditor, who needs to be a man of intelligence, good judgment, and clear perception. The work of some officials is largely routine work, but mere excellence in routine could never be sufficient qualification for an auditor.

The *county treasurer* receives all the taxes of the county. In many of the Eastern States there is a collector for each township, and the money to be expended in the township does not go into the county treasury. But in Ohio and most Western States, all taxes are paid to the county officer, and he pays out on the order of the auditor to the several township treasurers, and to the treasurers of any cities or villages in the county. The treasurer's term is two years, and he can serve but four years in six.

The duty of the *sheriff* is the same everywhere. He is to preserve the peace of the county, to apprehend criminals and hold them in custody, to have the oversight of the county jail, to execute the orders of the courts in the service of writs, etc. The term is two years, but by the constitution he can hold office only four years in six.

All attorneys-at-law are officers of the court, but the *prosecuting attorney* of a county is specially so. He attends to the drawing up of indictments for the action of the grand jury, and to the prosecution before the court of all criminals who have been indicted, as well as those tried for minor offenses. Before the year 1833 the prosecuting attorney was appointed by the court, but since that date he has been elected by the people.

The *county recorder* keeps a record in permanent form of all deeds, mortgages, village plats, etc. A power of attorney, by which the owner of land authorizes another person to transfer it, must be recorded in order to make the title good. There is no better system of record in any country, yet many persons are very negligent, letting deeds and mortgages made to them remain unrecorded for months and perhaps for years, and thus risking the loss of their property. The service is paid for by fees prescribed by law.

The *county surveyor* makes surveys required by the court, and may be engaged to make surveys for private persons. Early in the history of the State he was appointed by the court, as was also the recorder.

The principal duty of the *coroner* is to hold inquest—with or without the assistance of a jury as he may determine—in cases of death by violence. Formerly, if the office of the sheriff was vacant, or if the sheriff was a party in a suit, the coroner was required to take his place; but that provision no longer exists in Ohio. The office of coroner is declining in importance in many states.

The *infirmary directors* have charge of those poor of the county who are entirely dependent. Formerly there were overseers of the poor in each township, but now each county has its county infirmary. This name was substituted for "county poorhouse" by the General Assembly in 1850. There are three directors. Prior to 1842 the directors were appointed by the commissioners, but since that year their office has been elective.

In the year 1866 an act was passed by the General Assembly, authorizing the commissioners of any county to establish children's homes and provide for their support by taxation. The *trustees of the home*, four in number, are appointed by the commissioners of the county. More than half the counties in the State have provided themselves with these institutions.

TOWNSHIP GOVERNMENT.

The township officers elected by the people are: three trustees, clerk, treasurer, justices of the peace, assessor, constables, board of education. Since 1906 they have been elected on the Tuesday after the first Monday in November in odd-numbered years. The justices of the peace and board of education are elected for four years; the other officers for two years.

The *trustees* are to the township what the commissioners are to the county. They are the legal guardians of the public interests of the township. They are like the selectmen of the New England town. The township trustees may to a limited extent levy taxes; they open township roads on petition; divide the township into road districts; have charge of the poor who are not in the county infirmary; may purchase and care for cemeteries; select jurors; build and repair bridges where the expenditure is small; act as judges of elections; determine the number of constables for the township.

The *clerk* of the township is the clerk of the trustees. He attends their meetings, keeps the records of their proceedings, and draws orders on the treasury for whatever appropriations are made by them. He is also clerk of the township board of education.

The *treasurer* receives from the county treasurer the moneys belonging to the township, and makes payments on orders drawn by the clerk in accordance with the action of the trustees. He is the treasurer of the school funds also, paying out moneys on the order of the clerk. He is paid a small commission for disbursing the funds.

The *justices of the peace* have already been considered under the head of the judicial system.

For school purposes a township is divided into subdistricts, each of which elects a *director* each year. But the subdistricts and their directors are under the control of the township *board*

of education of five members. This body has full and absolute control and management of all the schools in the township, being empowered to build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites, rent suitable schoolrooms, and, in short, make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.

The township school districts do not include villages or cities, each of which has a board of education of its own. Each board of education has the management and control of the public schools of the district, with full power to appoint a superintendent and assistant superintendents of the schools, a superintendent of buildings, teachers, janitors, and other employees, and fix their salaries or pay, which may be increased but can not be diminished during the term for which the appointment is made.

The *assessor* ascertains each year the amount and value of all the personal property of each person in the township and reports the same to the county auditor. The assessment of real estate is made every four years by assessors elected for that purpose.

The *constable* is a police and ministerial officer. He arrests criminals, serves writs and other notices, subpœnas witnesses, summons those drawn as jurors, etc. He is the ministerial officer of the court of the justice of the peace, as the sheriff is of the higher courts.

Apportionment.—The subject of apportionment, so far as regards senators and representatives, has already been considered; and the Constitution having been amended as to the judiciary, judicial apportionment needs no consideration.

Finance and Taxation.—A poll tax being deemed grievous and oppressive, it can not be levied for State or county purposes. All property, real and personal, is to be taxed at its true value in money, excepting bonds of the State of Ohio and

of its cities, counties, etc.; but the public property, that used for educational, charitable, and religious purposes, and personal property not exceeding $200 for each person, may be exempted from taxation.

Real estate is assessed only once in four years, though the value of new buildings, additions, etc., is placed on the duplicate as the improvements are made. Personal property is returned every year. The returns of the assessors are made to the county auditors, and these make returns to the auditor of the State. Equalization is made by State, county, and city boards, and then the duplicates are given to the county treasurers for collection. Each person may deduct his debts from his credits but not from money or any other property. The whole tax may be paid in December; or, if preferred, one half then and the remainder in the June following.

The State is forbidden by the constitution to contract any debt for internal improvement.

Corporations are to be formed under general laws; not by special acts.

Formerly each stockholder in a corporation was liable, above the stock owned by him, to an additional sum equal in amount to his stock; but this provision was struck out in the year 1903.

"The General Assembly shall provide for the organization of *cities and incorporated villages* by general laws."

In all States, communities with a compact population, known as cities, towns, and villages, are provided with governments adapted to their peculiar circumstances. The ordinary township government is inadequate for such communities.

In Ohio all municipal corporations which at the last Federal census had a population of 5,000 or more are cities, and all such corporations having less than 5,000 are villages. The minimum population of a village, before it can be incorporated, is 300.

The chief officers of a city in Ohio are a mayor, council, president of council, auditor, treasurer, solicitor, and board of education. All of them except the board of education are elected for terms of two years.

The *mayor* is the chief executive officer. He has to some extent the appointing power, and acts as a judicial officer before whom those violating the city ordinances are brought.

In some cities there are *judges* of police courts.

The *council* is composed of members elected partly by wards and partly by the city at large. It is clothed with large legislative power. It enacts ordinances for the government of the city, levies taxes, provides city buildings, supplies gas and water, etc. The *president of council* succeeds to the office of mayor on the occurrence of a vacancy.

The duties of the *auditor*, *treasurer*, and *solicitor* are apparent from the titles of these officers.

The *director of public service*, appointed by the mayor and council, manages the public works, buildings, streets, etc, of the city.

The *director of public safety*, appointed by the mayor and council, has charge of the police and fire departments of the city. The directors of public service and of public safety take the place of boards which were formerly elected by the people.

The city *board of education*, consisting of members elected for four years, has charge of the public schools, which are brought into one system with a superintendent at its head. It has the power of taxation within defined limits. For a special tax, as for the erection of buildings, a vote of the people is necessary.

The government of a village is somewhat simpler than a city government. The chief officers of a village are a mayor, council, clerk, treasurer, marshal, street commissioner, and board of education.

Jurisprudence.—Article XIV. of the constitution provided for the appointment by the General Assembly in its first session of three commissioners to revise and simplify the practice, pleadings, etc., of the courts of record of the State.

Miscellaneous.—In Article XV. are these, among other provisions:

No person shall be elected or appointed to any office unless he have the qualifications of an elector.

Duelists and those aiding or abetting them can not hold office.

Lotteries and the sale of lottery tickets are forever prohibited.

A bureau of statistics may be established in the secretary of state's office.

Amendments to the constitution are provided for by Article XVI. They may be proposed by either branch of the legislature. If agreed to by three fifths of the members elected to each house, they shall be published in each county for six months before the next election of senators and representatives, at which time they shall be submitted to the electors. If adopted by a majority of votes cast at such election, they become a part of the constitution. If more than one be submitted at the same time they must be voted on separately.

A convention to revise the constitution may be called whenever two thirds of the elected members of each house shall recommend it to the people and a majority of the electors shall so vote. The convention shall consist of as many members as the house of representatives. Every twentieth year the question of a convention is to be submitted to the people, and one is to be held if a majority vote for it. No amendments so made shall have the force of laws until adopted by a majority of those voting thereon.

Under this clause a convention was called in 1871, but the constitution as amended by them was rejected by the people.

In 1891 no convention was held. In 1910 the people voted to call for a convention. Delegates were elected in November, 1911, and the convention met early in 1912 and proposed forty-two amendments for submission to a vote of the people on September 3.

Amendments proposed by the General Assembly have been adopted, but no convention has been called in consequence of a two thirds vote of that body.

Elections.—Article XVII., added to the constitution in 1905, provides that elections for State and county officers shall be held on the Tuesday after the first Monday in November in the even-numbered years, and all elections for all other elective officers on the same Tuesday in the odd-numbered years. The terms of State and local officers are fixed at two, four, or six years, or the General Assembly is given power to make the terms an even number of years within certain limits. Thus township and municipal elections are kept distinct from State and county elections.

This account of the State government of Ohio will give a general idea of the governments of the other States. They differ in many minor particulars, as the power of the executive, the right of suffrage, the terms of office, the mode of election of judges, the details of local government, etc.

In the New England States the *senators* and *representatives* were formerly elected annually, but now all except one have adopted the biennial system. In more than half the States the senators are elected for a longer period than the representatives. The house of representatives is usually larger than the senate—generally about as three to one. In some States the ratio is much larger than that. In most States the two houses are called the Legislature or the General Assembly. In Massachusetts and New Hampshire the colonial style, the General Court, is still used. In New York and a few other States the lower house is called the Assembly, and

in Maryland, Virginia, and West Virginia it is called the House of Delegates.

The *judges* of the supreme court are in most States elected by the people, but in others by the legislature. Other States, Maine, New Hampshire, and Massachusetts, provide for an appointment by the governor and council; some others, by the governor and the senate. Their term of office ranges from one year to life (good behavior). The longest specified term is in Pennsylvania — twenty-one years. In this last State they are not reëligible.

In a number of States *suffrage* was formerly limited to "white" persons, but the Fifteenth Amendment to the Constitution renders this limitation inoperative. Most of the States require the voter to be a citizen of the United States; but about a fifth of them make the legal declaration of intention to become a citizen sufficient. A residence of one year in the State is required in most of the States, though a number make six months sufficient; a few require two years. Several States make the payment of taxes a requisite for voting, and several require that voters shall be able to read. Idiots, insane persons, and those convicted of infamous crime are generally excluded from the suffrage, and in some States paupers also.

These particulars give a general idea of the sphere of the State governments, and show in what respects their constitutions differ. It will be seen that, ordinarily, the citizen has a more direct and personal relation to the laws of the State than to those of the nation. For many years prior to the civil war the people were conscious of their relation to the nation chiefly by the congressional and presidential elections. Taxes were paid to the State officials, and the laws which regulated the daily life of the people came from the State legislatures and not from Congress. But during the war the nation became to every man a distinct reality.

In general, the State governments have to do with matters

that are local and municipal, in distinction from those which are general and national. The well-being of the people is of course dependent upon both governments, though State legislation bears more directly than national upon their prosperity and happiness. There are some matters controlled by the States in regard to which uniformity is desirable; as, for example, the descent of property. It is unfortunate that a will, made and executed according to the forms of law in one State, should subsequently be found to be invalid because the death of the testator had occurred in another State to which he had removed.

The American people thus constitute one nation with whom is the sovereignty; but they have a government which is twofold—exists in two departments. To each of these departments the nation has committed certain governmental trusts. It might have distributed these trusts differently—given more to the one and less to the other. The nation may alter the distribution when it pleases; for, strictly, the sovereignty does not belong to the *government* of a nation, but to the *nation itself,* which has established the government. The people are undoubtedly competent to change the character of the government, and give it such form as they may think will most promote their interests. But as the people of the United States are also the people of the States severally, we may rest satisfied that no change will ever be made which the people of the States do not believe will be for their common good.

APPENDIX.

For list of PRESIDENTS, see pages 324–27.

The following is the list of VICE PRESIDENTS:

John Adams,	1789 to 1797.
Thomas Jefferson,	1797 to 1801.
Aaron Burr,	1801 to 1805.
George Clinton,	1805 to 1812.[1]
Elbridge Gerry,	1813 to 1814.[2]
Daniel D. Tompkins,	1817 to 1825.
John C. Calhoun,	1825 to 1832.[3]
Martin Van Buren,	1833 to 1837.
Richard M. Johnson,	1837 to 1841.
John Tyler,	1841 to 1841.[4]
George M. Dallas,	1845 to 1849.
Millard Fillmore,	1849 to 1850.[5]
William R. King,	1853 to 1853.[6]
John C. Breckenridge,	1857 to 1861.
Hannibal Hamlin,	1861 to 1865.
Andrew Johnson,	1865 to 1865.[7]
Schuyler Colfax,	1869 to 1873.
Henry Wilson,	1873 to 1875.[8]
William A. Wheeler,	1877 to 1881.
Chester A. Arthur,	1881 to 1881.[9]
Thomas A. Hendricks,	1885 to 1885.[10]
Levi P. Morton,	1889 to 1893.

[1] Died April 20, 1812.
[2] Died November 23, 1814.
[3] Resigned December 28, 1832.
[4] Became President April 6, 1841.
[5] Became President July 9, 1850.
[6] Died April 18, 1853.
[7] Became President April 15, 1865.
[8] Died November 23, 1875.
[9] Became President September 20, 1881.
[10] Died November 25, 1885.

Adlai E. Stevenson,	1893 to 1897.
Garret A. Hobart,	1897 to 1899.[1]
Theodore Roosevelt,	1901 to 1901.[2]
Charles W. Fairbanks,	1905 to 1909.
James S. Sherman,	1909 to ——.

Senators who have presided over the Senate as presidents *pro tempore* when there was no Vice President:

William H. Crawford, after the death of George Clinton.
John Gaillard, after the death of Elbridge Gerry.
Hugh L White, after the resignation of John C Calhoun.
Samuel L. Southard, Willie P. Mangum, } during the Presidency of John Tyler.
William R. King, during the Presidency of Millard Fillmore.
David R. Atchison, Jesse D. Bright, } after the death of W. R. King.
Lafayette S. Foster, Benjamin F. Wade, } during the Presidency of Andrew Johnson.
Thomas W. Ferry, after the death of Henry Wilson.
David Davis, George F. Edmunds, } during the Presidency of C. A. Arthur.
John Sherman, John J. Ingalls, } after the death of Thomas A. Hendricks.
William P. Frye, after the death of Garret A. Hobart.
William P. Frye, during the Presidency of Theodore Roosevelt.

Speakers of the House of Representatives.

1st Congress,	F. A. Muhlenberg,	Penn.
2d "	Jonathan Trumbull,	Conn.
3d "	F. A. Muhlenberg,	Penn.
4th "	Jonathan Dayton,	N. J.

[1] Died November 21, 1899. [2] Became President September 14, 1901.

5th	Congress,	Jonathan Dayton,	N J.
6th	"	Theodore Sedgwick,	Mass.
7th	"	Nathaniel Macon,	N. C.
8th	"	Nathaniel Macon,	N. C.
9th	"	Nathaniel Macon,	N. C.
10th	"	Joseph B Varnum,	Mass.
11th	"	Joseph B Varnum,	Mass.
12th	"	Henry Clay,	Ky.
13th	"	Henry Clay,	Ky.
		Langdon Cheves,	S. C.
14th	"	Henry Clay,	Ky.
15th	"	Henry Clay,	Ky.
16th	"	Henry Clay,	Ky.
		John W. Taylor,	N. Y.
17th	"	P. P. Barbour,	Va.
18th	"	Henry Clay,	Ky.
19th	"	John W Taylor,	N. Y.
20th	"	Andrew Stevenson,	Va.
21st	"	Andrew Stevenson,	Va.
22d	"	Andrew Stevenson,	Va.
23d	"	Andrew Stevenson,	Va.
		John Bell,	Tenn.
24th	"	James K. Polk,	Tenn.
25th	"	James K. Polk,	Tenn.
26th	"	R. M. T. Hunter,	Va.
27th	"	John White,	Ky.
28th	"	John W. Jones,	Va.
29th	"	John W Davis,	Ind.
30th	"	Robert C. Winthrop,	Mass.
31st	"	Howell Cobb,	Ga.
32d	"	Linn Boyd,	Ky.
33d	"	Linn Boyd,	Ky.
34th	"	Nathaniel P Banks,	Mass.
35th	"	James L. Orr,	S C.
36th	"	William Pennington,	N. J.
37th	"	Galusha A Grow,	Penn
38th	"	Schuyler Colfax,	Ind.
39th	"	Schuyler Colfax,	Ind.
40th	"	Schuyler Colfax,	Ind
41st	"	James G. Blaine,	Maine
42d	"	James G. Blaine,	Maine.

43d Congress,	James G. Blaine,	Maine.
44th "	Michael C. Kerr,	Ind.
	Samuel J. Randall,	Penn.
45th "	Samuel J. Randall,	Penn.
46th "	Samuel J. Randall,	Penn.
47th "	Joseph Warren Keifer,	Ohio.
48th "	John G. Carlisle,	Ky.
49th "	John G. Carlisle,	Ky.
50th "	John G. Carlisle,	Ky.
51st "	Thomas B. Reed,	Maine.
52d "	Charles F. Crisp,	Ga.
53d "	Charles F. Crisp,	Ga.
54th "	Thomas B. Reed,	Maine.
55th "	Thomas B. Reed,	Maine.
56th "	David B. Henderson,	Iowa.
57th "	David B. Henderson,	Iowa.
58th "	Joseph G. Cannon,	Ill.
59th "	Joseph G. Cannon,	Ill.
60th "	Joseph G. Cannon,	Ill.
61st "	Joseph G. Cannon,	Ill.
62d "	Champ Clark,	Mo.

Secretaries of State.

Thomas Jefferson,	Va.,	appointed	Sept. 26, 1789
Edmund Randolph,	Va.,	"	Jan. 2, 1794.
Timothy Pickering,	Mass.,	"	Dec. 10, 1795
John Marshall,	Va.,	"	May 13, 1800.
James Madison,	Va.,	"	March 5, 1801.
Robert Smith,	Md.,	"	March 6, 1809.
James Monroe,	Va.,	"	April 2, 1811.
John Q. Adams,	Mass.,	"	March 5, 1817.
Henry Clay,	Ky.,	"	March 7, 1825.
Martin Van Buren,	N. Y.,	"	March 6, 1829.
Edward Livingston,	La.,	"	May 24, 1831.
Louis McLane,	Del.,	"	May 29, 1833.
John Forsyth,	Ga.,	"	June 27, 1834

Daniel Webster,	Mass.,	appointed	March 5, 1841.
Hugh S. Legaré, *ad int.*,	S. C.,	"	May 9, 1843.
Abel P. Upshur,	Va.,	"	July 24, 1843.
John C. Calhoun,	S. C.,	"	March 6, 1844.
James Buchanan,	Penn.,	"	March 5, 1845.
John M. Clayton,	Del.,	"	March 7, 1849.
Daniel Webster,	Mass.,	"	July 22, 1850.
Edward Everett,	Mass.,	"	Nov. 6, 1852.
William L. Marcy,	N. Y.,	"	March 7, 1853.
Lewis Cass,	Mich.,	"	March 6, 1857.
Jeremiah S. Black,	Penn.,	"	Dec. 17, 1860.
William H. Seward,	N. Y.,	"	March 5, 1861.
Elihu B. Washburne,	Ill.,	"	March 5, 1869.
Hamilton Fish,	N. Y.,	"	March 11, 1869.
William M. Evarts,	N. Y.,	"	March 12, 1877.
James G. Blaine,	Maine,	"	March 5, 1881.
Frederick T. Frelinghuysen,	N. J.,	"	Dec. 12, 1881.
Thomas F. Bayard,	Del.,	"	March 6, 1885.
James G. Blaine,	Maine,	"	March 5, 1889.
John W. Foster,	Ind.,	"	June 29, 1892.
Walter Q. Gresham,	Ill.,	"	March 6, 1893.
Richard Olney,	Mass.,	"	June 8, 1895.
John Sherman,	Ohio,	"	March 5, 1897.
William R. Day,	Ohio,	"	April 26, 1898.
John Hay,	D. C.,	"	Sept. 20, 1898.
Elihu Root,	N. Y.,	"	July 7, 1905.
Philander C. Knox,	Penn.,	"	March 5, 1909.

It will be seen that six Secretaries of State afterward were elected to the Presidency, viz., Jefferson, Madison, Monroe, J. Q. Adams, Van Buren, and Buchanan.

Secretaries of the Treasury.

Alexander Hamilton,	N. Y.,	appointed	Sept. 11, 1789.
Oliver Wolcott,	Conn.,	"	Feb. 3, 1795.

Samuel Dexter,	Mass.,	appointed	Dec. 31, 1800.
Albert Gallatin,	Penn.,	"	May 14, 1801.
George W. Campbell,	Tenn.,	"	Feb. 9, 1814.
Alexander J. Dallas,	Penn.,	"	Oct. 6, 1814.
William H. Crawford,	Ga.,	"	Oct. 22, 1816.
Richard Rush,	Penn.,	"	March 7, 1825.
Samuel D. Ingham,	Penn.,	"	March 6, 1829.
Louis McLane,	Del.,	"	Aug. 8, 1831.
William J. Duane,	Penn.,	"	May 29, 1833.
Roger B. Taney,	Md.,	"	Sept. 23, 1833.[1]
Levi Woodbury,	N. H.,	"	June 27, 1834.
Thomas Ewing,	Ohio,	"	March 5, 1841.
Walter Forward,	Penn.,	"	Sept. 13, 1841.
John C. Spencer,	N. Y.,	"	March 3, 1843.
George M. Bibb,	Ky.,	"	June 15, 1844.
Robert J. Walker,	Miss.,	"	March 5, 1845.
William M. Meredith,	Penn.,	"	March 8, 1849.
Thomas Corwin,	Ohio,	"	July 23, 1850.
James Guthrie,	Ky.,	"	March 7, 1853.
Howell Cobb,	Ga.,	"	March 6, 1857.
Philip F. Thomas,	Md.,	"	Dec. 12, 1860.
John A. Dix,	N. Y.,	"	Jan. 11, 1861.
Salmon P. Chase,	Ohio,	"	March 7, 1861.
William P. Fessenden,	Maine,	"	July 1, 1864.
Hugh McCulloch,	Ind.,	"	March 7, 1865.
Alexander T. Stewart,	N. Y.,	"	March 5, 1869.[2]
George S. Boutwell,	Mass.,	"	March 11, 1869.
William A. Richardson,	Mass.,	"	March 17, 1873.
Benjamin H. Bristow,	Ky.,	"	June 4, 1874.
Lot M. Morrill,	Maine,	"	July 7, 1876.
John Sherman,	Ohio,	"	March 8, 1877.
William Windom,	Minn.,	"	March 5, 1881.
Charles J. Folger,	N. Y.,	"	Oct. 27, 1881.
Walter Q. Gresham,	Ind.,	"	Sept. 24, 1884.
Hugh McCulloch,	Ind.,	"	Oct. 28, 1884.
Daniel Manning,	N. Y.,	"	March 6, 1885.
Charles S. Fairchild,	N. Y.,	"	March 31, 1887.
William Windom,	Minn.,	"	March 5, 1889.
Charles Foster,	Ohio,	"	Feb. 24, 1891.

[1] Rejected by the Senate.

[2] Not confirmed by the Senate, being ineligible as an importer.

John G. Carlisle,	Ky.,	appointed	March 6, 1893.
Lyman J. Gage,	Ill.,	"	March 4, 1897.
Leslie M. Shaw,	Iowa,	"	Jan. 7, 1902.
George B. Cortelyou,	N. Y.,	"	Dec. 13, 1906.
Franklin MacVeagh,	Ill.,	"	March 5, 1909.

Secretaries of War.

Henry Knox,	Mass.,	appointed	Sept. 12, 1789.
Timothy Pickering,	Mass.,	"	Jan. 2, 1795.
James McHenry,	Md.,	"	Jan. 27, 1796.
John Marshall,	Va.,	"	May 7, 1800.[1]
Samuel Dexter,	Mass.,	"	May 13, 1800.
Roger Griswold,	Conn.,	"	Feb. 3, 1801.[2]
Henry Dearborn,	Mass.,	"	March 5, 1801.
William Eustis,	Mass.,	"	March 7, 1809.
John Armstrong,	N. Y.,	"	Jan. 13, 1813.
James Monroe,	Va.,	"	Sept. 27, 1814.
William H. Crawford,	Ga.,	"	March 3, 1815.
Isaac Shelby,	Ky.,	"	March 5, 1817.[2]
George Graham, *ad int.*,	Va.,	"	April 7, 1817.
John C. Calhoun,	S. C.,	"	Oct. 8, 1817.
James Barbour,	Va.,	"	March 7, 1825.
Peter B. Porter,	N. Y.,	"	May 26, 1828
John H. Eaton,	Tenn.,	"	March 9, 1829.
Lewis Cass,	Mich.,	"	Aug. 1, 1831.
Benjamin F. Butler,	N. Y.,	"	March 3, 1837.
Joel R. Poinsett,	S. C.,	"	March 7, 1837.
John Bell,	Tenn.,	"	March 5, 1841.
John McLean,	Ohio,	"	Sept. 13, 1841.[2]
John C. Spencer,	N. Y.,	"	Oct. 12, 1841.

[1] Action postponed by Senate. Appointed Secretary of State May 13th.
[2] Declined.

James M. Porter,	Penn ,	appointed	March 8, 1843.[1]
William Wilkins,	Penn.,	"	Feb. 15, 1844.
William L. Marcy,	N. Y.,	"	March 5, 1845.
George W. Crawford,	Ga.,	"	March 8, 1849.
Charles M. Conrad,	La.,	"	Aug 15, 1850.
Jefferson Davis,	Miss.,	"	March 5, 1853.
John B. Floyd,	Va.,	"	March 6, 1857.
Joseph Holt,	Ky.,	"	Jan. 18, 1861.
Simon Cameron,	Penn.,	"	March 5, 1861.
Edwin M. Stanton,	Penn.,	"	Jan. 15, 1862.[2]
Ulysses S. Grant, *ad int.*,	Ill.,	"	Aug. 12, 1867.
Edwin M. Stanton,	Penn.,	"	Jan. 13, 1868.[3]
John M. Schofield,	Mo.,	"	May 28, 1868.
John A. Rawlins,	Ill.,	"	March 11, 1869.
Wm. T. Sherman, *ad int.*,	Ohio,	"	Sept. 9, 1869.
William W. Belknap,	Iowa,	"	Oct. 25, 1869.
Alphonso Taft,	Ohio,	"	March 8, 1876.
J. Donald Cameron,	Penn.,	"	May 22, 1876.
George W. McCrary,	Iowa,	"	March 12, 1877.
Alexander Ramsey,	Minn.,	"	Dec. 10, 1879.
Robert T. Lincoln,	Ill.,	"	March 5, 1881.
William C. Endicott,	Mass.,	"	March 6, 1885.
Redfield Proctor,	Vt.,	"	March 5, 1889.
Stephen B. Elkins,	W. Va.,	"	Dec. 22, 1891.
Daniel S. Lamont,	N. Y.,	"	March 6, 1893.
Russell A. Alger,	Mich.,	"	March 5, 1897.
Elihu Root,	N. Y.,	"	Aug. 1, 1899
William H. Taft,	Ohio,	"	Jan. 4, 1904.
Luke E. Wright,	Tenn.,	"	July 1, 1908.
Jacob McG. Dickinson,	Tenn.,	"	March 5, 1909.
Henry L. Stimson,	N. Y.,	"	May 12, 1911.

[1] Rejected by the Senate.

[2] Suspended by President Johnson, August 12, 1867.

[3] Restored by the Senate.

Attorneys-General.

Edmund Randolph,	Va.,	appointed	Sept. 26, 1789.
William Bradford,	Penn.,	"	Jan. 28, 1794.
Charles Lee,	Va.,	"	Dec. 10, 1795.
Theophilus Parsons,	Mass.,	"	Feb. 20, 1801.
Levi Lincoln,	Mass.,	"	March 5, 1801.
Robert Smith,	Md.,	"	March 2, 1805.
John Breckenridge,	Ky.,	"	Aug. 7, 1805.
Cæsar A. Rodney,	Del.,	"	Jan. 20, 1807.
William Pinkney,	Md.,	"	Dec. 11, 1811.
Richard Rush,	Penn.,	"	Feb. 10, 1814.
William Wirt,	Va.,	"	Nov. 13, 1817.
J. McPherson Berrien,	Ga.,	"	March 9, 1829.
Roger B. Taney,	Md.,	"	July 20, 1831.
Benjamin F. Butler,	N. Y.,	"	Nov. 15, 1833.
Felix Grundy,	Tenn.,	"	Sept. 1, 1838.
Henry D. Gilpin,	Penn.,	"	Jan. 10, 1840.
John J. Crittenden,	Ky.,	"	March 5, 1841.
Hugh S. Legaré,	S. C.,	"	Sept. 13, 1841.
John Nelson,	Md.,	"	July 1, 1843.
John Y. Mason,	Va.,	"	March 5, 1845.
Nathan Clifford,	Maine,	"	Oct. 17, 1846
Isaac Toucey,	Conn.,	"	June 21, 1848.
Reverdy Johnson,	Md.,	"	March 7, 1849.
John J. Crittenden,	Ky.,	"	July 20, 1850.
Caleb Cushing,	Mass.,	"	March 7, 1853.
Jeremiah S. Black,	Penn.,	"	March 6, 1857.
Edwin M. Stanton,	Penn.,	"	Dec. 20, 1860.
Edward Bates,	Mo.,	"	March 5, 1861.
Titian J. Coffey, *ad int* ,	Pa.,	"	June 22, 1863.
James Speed,	Ky.,	"	Dec. 2, 1864.
Henry Stanbery,	Ohio,	"	July 23, 1866.
William M. Evarts,	N. Y.,	"	July 15, 1868.
E. R. Hoar,	Mass.,	"	March 5, 1869.
Amos T. Ackerman,	Ga.,	"	June 23, 1870.
George H. Williams,	Oregon,	"	Dec. 14, 1871.
Edwards Pierrepont,	N. Y.,	"	April 26, 1875.

Alphonso Taft,	Ohio,	appointed	May 22, 1876.
Charles Devens,	Mass.,	"	March 12, 1877.
Wayne McVeagh,	Penn.,	"	March 5, 1881.
Benjamin H. Brewster,	Penn.,	"	Dec. 19, 1881.
Augustus H. Garland,	Ark.,	"	March 6, 1885.
William H. H. Miller,	Ind ,	"	March 5, 1889.
Richard Olney,	Mass.,	"	March 6, 1893.
Judson Harmon,	Ohio,	"	June 8, 1895.
Joseph McKenna,	Cal.,	"	March 5, 1897.
John W. Griggs,	N. J.,	"	Jan. 22, 1898.
Philander C. Knox,	Pa.,	"	April 5, 1901.
William H. Moody,	Mass.,	"	July 1, 1904.
Charles J. Bonaparte,	Md.,	"	Dec. 3, 1906.
George W. Wickersham,	N. Y.,	"	March 5, 1909.

Postmasters-General.

Samuel Osgood,	Mass.,	appointed	Sept. 26, 1789.
Timothy Pickering,	Mass.,	"	Aug. 12, 1791.
Joseph Habersham,	Ga ,	"	Feb. 25, 1795.
Gideon Granger,	Conn.,	"	Nov. 28, 1801.
Return J. Meigs, Jr.,	Ohio,	"	March 17, 1814.
John McLean,	Ohio,	"	June 26, 1823.
William T. Barry,	Ky.,	"	March 9, 1829.
Amos Kendall,	Ky.,	"	May 1, 1835.
John M. Niles,	Conn.,	"	May 25, 1840.
Francis Granger,	N. Y.,	"	March 6, 1841.
Charles A. Wickliffe,	Ky.,	"	Sept. 13, 1841.
Cave Johnson,	Tenn.,	"	March 5, 1845.
Jacob Collamer,	Vt.,	"	March 7, 1849.
Nathan K. Hall,	N. Y.,	"	July 20, 1850.
Samuel D. Hubbard,	Conn.,	"	Aug. 31, 1852.
James Campbell,	Penn.,	"	March 7, 1853.
Aaron V. Brown,	Tenn.,	"	March 6, 1857.

Joseph Holt,	Ky.,	appointed	March 14, 1859.
Horatio King,	Me.,	"	Feb. 12, 1861.
Montgomery Blair,	Md.,	"	March 5, 1861.
William Dennison,	Ohio,	"	Sept. 24, 1864.
Alexander W. Randall,	Wis.,	"	July 25, 1866.
John A. J. Creswell,	Md.,	"	March 5, 1869.
James W. Marshall,	N. J.,	"	July 3, 1874.
Marshall Jewell,	Conn.,	"	Aug. 24, 1874.
James M. Tyner,	Ind.,	"	July 12, 1876.
David M. Key,	Tenn.,	"	March 12, 1877.
Horace Maynard,	Tenn.,	"	June 2, 1880.
Thomas L. James,	N. Y.,	"	March 5, 1881.
Timothy O. Howe,	Wis.,	"	Dec. 20, 1881.
Walter Q. Gresham,	Ind.,	"	April 4, 1883.
Frank Hatton,	Iowa,	"	Oct. 14, 1884.
William F. Vilas,	Wis.,	"	March 6, 1885.
Don M. Dickinson,	Mich.,	"	Jan. 16, 1888.
John Wanamaker,	Pa.,	"	March 5, 1889.
Wilson S. Bissell,	N. Y.,	"	March 6, 1893.
William L. Wilson,	W. Va.,	"	Feb. 28, 1895.
James A. Gary,	Md.,	"	March 5, 1897
Charles E. Smith,	Pa.,	"	April 21, 1898.
Henry C. Payne,	Wis.,	"	Jan. 7, 1902.
Robert J. Wynne,	Pa.,	"	Oct. 10, 1904.
George B. Cortelyou,	N. Y.,	"	March 6, 1905.
George von L. Meyer,	Mass.,	"	Dec. 13, 1906.
Frank H. Hitchcock,	Mass.,	"	March 5, 1909.

Secretaries of the Navy

George Cabot,	Mass.,	appointed	May 3, 1798.[1]
Benjamin Stoddert,	Md.,	"	May 21, 1798.
Robert Smith,	Md.,	"	July 15, 1801.
Jacob Crowninshield,	Mass.,	"	March 2, 1805.
Paul Hamilton,	S C.,	"	March 7, 1809.
William Jones,	Penn.,	"	Jan 12, 1813.

[1] Declined.

B. W. Crowninshield,	Mass.,	appointed	Dec. 17, 1814.
Smith Thompson,	N. Y.,	"	Nov. 9, 1818.
John Rodgers,	Md.,	"	Sept. 1, 1823.[1]
Samuel L. Southard,	N. J.,	"	Sept. 16, 1823.
John Branch,	N. C.,	"	March 9, 1829.
Levi Woodbury,	N. H.,	"	May 23, 1831.
Mahlon Dickerson,	N. J.,	"	June 30, 1834.
James K. Paulding,	N. Y.,	"	June 30, 1838.
George E. Badger,	N. C.,	"	March 5, 1841.
Abel P. Upshur,	Va.,	"	Sept. 13, 1841.
David Henshaw,	Mass.,	"	July 24, 1843.
Thomas W. Gilmer,	Va.,	"	Feb. 15, 1844.
John Y. Mason,	Va.,	"	March 14, 1844
George Bancroft,	Mass.,	"	March 10, 1845.
John Y. Mason,	Va.,	"	Sept. 9, 1846.
William B. Preston,	Va.,	"	March 8, 1849.
William A. Graham,	N. C.,	"	July 22, 1850.
John P. Kennedy,	Md.,	"	July 22, 1852.
James C. Dobbin,	N. C.,	"	March 7, 1853.
Isaac Toucey,	Conn.,	"	March 6, 1857.
Gideon Welles,	Conn.,	"	March 5, 1861.
Adolph E. Boric,	Penn.,	"	March 5, 1869.
George M. Robeson,	N. J.,	"	June 25, 1869.
Richard W. Thompson,	Ind.,	"	March 12, 1877.
Nathan Goff,	W. Va.,	"	Jan. 6, 1881.
William H. Hunt,	La.,	"	March 5, 1881.
William E. Chandler,	N. H.,	"	April 1, 1882.
William C. Whitney,	N. Y.,	"	March 6, 1885.
Benj. F. Tracy,	N. Y.,	"	March 5, 1889.
Hilary A. Herbert,	Ala.,	"	March 6, 1893.
John D. Long,	Mass.,	"	March 5, 1897.
William H. Moody,	Mass.,	"	April 29, 1902.
Paul Morton,	Ill.,	"	July 1, 1904.
Charles J. Bonaparte,	Md.,	"	July 1, 1905.
Victor H. Metcalf,	Cal.,	"	Dec. 3, 1906.
Truman H. Newberry,	Mich.,	"	Dec. 1, 1908.
George von L. Meyer,	Mass.,	"	March 5, 1909.

[1] Declined.

Secretaries of the Interior.

Thomas Ewing,	Ohio,	appointed	March 7, 1849.
Alexander H. H. Stuart,	Va.,	"	Sept. 12, 1850.
Robert McClelland,	Mich.,	"	March 7, 1853.
Jacob Thompson,	Miss.,	"	March 6, 1857.[1]
Caleb B. Smith,	Ind.,	"	March 5, 1861.
John P. Usher,	Ind.,	"	Jan. 8, 1863.
James Harlan,	Iowa,	"	May 15, 1865.
Orville H. Browning,	Ill.,	"	July 27, 1866.
Jacob D. Cox,	Ohio,	"	March 5, 1869.
Columbus Delano,	Ohio,	"	Nov. 1, 1870.
Zachariah Chandler,	Mich.,	"	Oct. 19, 1875.
Carl Schurz,	Mo.,	"	March 12, 1877.
Samuel J. Kirkwood,	Iowa,	"	March 5, 1881.
Henry M. Teller,	Col.,	"	April 6, 1882.
Lucius Q. C. Lamar,	Miss.,	"	March 6, 1885.
William F. Vilas,	Wis.,	"	Jan. 16, 1888.
John W. Noble,	Mo.,	"	March 5, 1889.
Hoke Smith,	Ga.,	"	March 6, 1893.
David R. Francis,	Mo.,	"	Aug. 24, 1896.
Cornelius N. Bliss,	N. Y.,	"	March 5, 1897.
Ethan Allen Hitchcock,	Mo.,	"	Dec. 21, 1898.
James R. Garfield,	Ohio,	"	Dec. 13, 1906.
Richard A. Ballinger,	Wash.,	"	March 5, 1909.
Walter L. Fisher,	Ill.,	"	March 7, 1911.

[1] Resigned January 8, 1861.

Secretaries of Agriculture.

Norman J. Coleman,	Mo ,	appointed Feb. 12, 1889.
Jeremiah M. Rusk,	Wis.,	" March 5, 1889.
J. Sterling Morton,	Neb.,	" March 6, 1893.
James Wilson,	Iowa,	" March 5, 1897.

Secretaries of Commerce and Labor.

George B. Cortelyou,	N. Y.,	appointed Feb. 16, 1903.
Victor H. Metcalf,	Cal.,	" July 1, 1904.
Oscar S. Straus,	N. Y.,	" Dec. 3, 1906.
Charles Nagel,	Mo.,	" March 5, 1909.

For list of Chief Justices of the Supreme Court, see pages 353, 354.

Associate Justices of the Supreme Court.

		Term of Service.
John Rutledge,	S. C.,	1789 to 1791.[1]
William Cushing,	Mass.,	1789 to 1810.[2]
James Wilson,	Penn.,	1789 to 1798.[2]
John Blair,	Va.,	1789 to 1796.[1]
Robert H. Harrison,	Md.,	1789 to 1790.[1]
James Iredell,	N. C.,	1790 to 1799.[2]
Thomas Johnson,	Md.,	1791 to 1793.[1]
William Paterson,	N. J.,	1793 to 1806.[2]
Samuel Chase,	Md.,	1796 to 1811.[2]
Bushrod Washington,	Va.,	1798 to 1829.[2]

[1] Resigned. [2] Died.

		Term of Service.
Alfred Moore,	N. C.,	1799 to 1804.[1]
William Johnson,	S. C.,	1804 to 1834.[2]
Brockholst Livingston,	N. Y.,	1806 to 1823.[2]
Thomas Todd,	Ky.,	1807 to 1826.[2]
Levi Lincoln,	Mass.,	Declined.
John Quincy Adams,	Mass.,	Declined.
Gabriel Duval,	Md.,	1811 to 1835.[1]
Joseph Story,	Mass.,	1811 to 1845.[2]
Smith Thompson,	N. Y.,	1823 to 1843.[2]
Robert Trimble,	Ky.,	1826 to 1828.[2]
John McLean,	Ohio,	1829 to 1861.[2]
Henry Baldwin,	Penn.,	1830 to 1844.[2]
James M. Wayne,	Ga.,	1835 to 1867.[2]
Philip P. Barbour,	Va.,	1836 to 1841.[2]
John Catron,	Tenn.,	1837 to 1865.[2]
William Smith,	Ala.,	Declined.
John McKinley,	Ala.,	1837 to 1852.[2]
Peter V. Daniel,	Va.,	1841 to 1860.[2]
Samuel Nelson,	N. Y.,	1845 to 1872.[3]
Levi Woodbury,	N. H.,	1845 to 1851.[2]
Robert C. Grier,	Penn.,	1846 to 1870.[3]
Benjamin R. Curtis,	Mass.,	1851 to 1857.[1]
John A. Campbell,	Ala.,	1853 to 1861.[1]
Nathan Clifford,	Maine,	1858 to 1881.[2]
Noah H. Swayne,	Ohio,	1861 to 1881.[3]
Samuel F. Miller,	Iowa,	1862 to 1890.[2]
David Davis,	Ill.,	1862 to 1877.[1]
Stephen J. Field,	Cal.,	1863 to 1897.[3]
William Strong,	Penn.,	1870 to 1880.[3]
Joseph P. Bradley,	N. J.,	1870 to 1892.[2]
Ward Hunt,	N. Y.,	1872 to 1882.[4]
John M. Harlan,	Ky.,	1877 to 1911.[2]
William B. Woods,	Ala.,	1880 to 1887.[2]
Stanley Matthews,	Ohio,	1881 to 1889.[2]
Horace Gray,	Mass.,	1881 to 1902.[3]
Samuel Blatchford,	N. Y.,	1882 to 1893.[2]

[1] Resigned.
[2] Died.
[3] Resigned, with salary continued.
[4] Resigned, with salary continued by special act of Congress.

		Term of Service.
Lucius Q. C. Lamar,	Miss.,	1888 to 1893.[1]
David J. Brewer,	Kan.,	1889 to 1910.[1]
Henry B. Brown,	Mich.,	1890 to 1906.[2]
George Shiras, Jr.,	Penn.,	1892 to 1903.[2]
Howell E. Jackson,	Tenn.,	1893 to 1895.[1]
Edward D. White,	La.,	1894 to 1910.[3]
Rufus W. Peckham,	N. Y.,	1895 to 1909.[1]
Joseph McKenna,	Cal.,	1898 to ——.
Oliver W. Holmes,	Mass.,	1902 to ——.
William R. Day,	Ohio,	1903 to ——.
William H. Moody,	Mass.,	1906 to 1910.[2]
Horace H. Lurton,	Tenn.,	1910 to ——.
Charles E. Hughes,	N. Y.,	1910 to ——.
Joseph R. Lamar,	Ga.,	1910 to ——.
Willis Van Devanter,	Wyo.,	1910 to ——.
Mahlon Pitney,	N. J.,	1912 to ——.

[1] Died.
[2] Resigned, with salary continued.
[3] Became Chief Justice.

THE DECLARATION OF INDEPENDENCE — 1776

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. — Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all hav-

ing in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us in times of peace, standing armies, without the consent of our legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire

Josiah Bartlett,
Wm. Whipple,
Matthew Thornton.

Massachusetts Bay

Saml. Adams,
John Adams,
Robt. Treat Paine,
Elbridge Gerry.

Rhode Island

Step. Hopkins,
William Ellery.

Connecticut

Roger Sherman,
Sam'el Huntington,
Wm. Williams,
Oliver Wolcott.

New York

Wm. Floyd,
Phil. Livingston,
Frans. Lewis,
Lewis Morris.

New Jersey

Richd. Stockton,
Jno. Witherspoon,
Fras. Hopkinson,
John Hart,
Abra. Clark.

Pennsylvania

Robt. Morris,
Benjamin Rush,
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

Delaware

Cæsar Rodney,
Geo. Read,
Tho. M'Kean.

Maryland

Samuel Chase,
Wm. Paca,
Thos. Stone,
Charles Carroll of Carrollton.

Virginia

George Wythe,
Richard Henry Lee,
Th Jefferson,
Benja. Harrison,
Thos. Nelson, jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina

Wm. Hooper,
Joseph Hewes,
John Penn.

South Carolina

Edward Rutledge,
Thos. Heyward, Junr.,
Thomas Lynch, Junr.,
Arthur Middleton.

Georgia

Button Gwinnett,
Lyman Hall,
Geo. Walton.

ARTICLES OF CONFEDERATION

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA

ARTICLE I.—The style of this confederacy shall be, "The United States of America."

ART. II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States ; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant ; provided, also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such

manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members ; and no person shall be capable of being a delegate for more than three years, in any term of six years ; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress ; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state ; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state ; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No States shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace, by any State, except such number only as shall be deemed necessary, by the United States in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up, by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to

any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII.—When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in

question; but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treatise or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of

them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X.—The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. XI.—Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same unless such admission be agreed to by nine States.

ART. XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislatures of every State.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778,* and in the third year of the Independence of America.

* Only ten States took action upon the Articles at this time. New Jersey, Delaware, and Maryland did not ratify them until later.

ORDINANCE OF 1787

July 13, 1787

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH-WEST OF THE RIVER OHIO

Be it ordained, by the United States, in Congress assembled, that the said Territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained, by the authority aforesaid, that the estates, both of resident and non-resident proprietors in the said Territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child, or grandchild, to take the share of their deceased parent, in equal parts, among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have, in equal parts, among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said Territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age), and attested by three witnesses, and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to descent and conveyance of property.

Be it ordained, by the authority aforesaid, that there shall be appointed from time to time, by Congress, a governor, whose commission shall con-

tinue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers. All general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; *provided*, that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives, shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; *provided*, that no person be eligible or qualified to act as a representative, unless he

shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; *provided*, *also*, that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office for five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner; to-wit, as soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed.

And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office—the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis

of all laws, constitutions, and governments, which forever hereafter shall be formed in the said Territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States in the said Territory, and forever remain unalterable, unless by common consent, to-wit:

ART. I.—No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said Territory.

ART. II.—The inhabitants of the said Territory shall always be entitled to the benefit of the writ of *habeas corpus*, and of trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate, and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with, or affect private contracts or engagements, *bona fide* and without fraud previously formed.

ART. III.—Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. IV.—The said Territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alteration therein, as shall be constitutionally made; and to all the acts and ordinances of the United States, in Congress assembled, conformable thereto. The inhabitants and settlers in the said Territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them, by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States, in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations

Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States ; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well as to the inhabitants of the said Territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. V.—There shall be formed in the said Territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit : The western State in the said Territory, shall be bounded by the Mississippi, the Ohio, and the Wabash rivers ; a direct line drawn from the Wabash and Post Vincents due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the Mouth of the Great Miami to the said territorial line, and by said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line : *provided*, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatsoever ; and shall be at liberty to form a permanent constitution and State government : *provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles ; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. VI.—There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted : *provided*, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained, by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

CONSTITUTION OF THE UNITED STATES—1787[1]

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. 1 The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2 No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3 Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4 When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5 The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3. 1 The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years; and each senator shall have one vote.

[1] This reprint of the Constitution exactly follows the text of that in the Department of State at Washington, save in the spelling of a few words.

2 Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3 No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4 The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5 The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6 The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7 Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. 1 The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2 The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. 1 Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

2 Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3 Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

4 Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. 1 The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2 No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7. 1 All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2 Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3 Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. 1 The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2 To borrow money on the credit of the United States;

3 To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4 To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5 To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6 To provide for the punishment of counterfeiting the securities and current coin of the United States;

7 To establish post offices and post roads;

8 To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9 To constitute tribunals inferior to the Supreme Court;

10 To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11 To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12 To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13 To provide and maintain a navy;

14 To make rules for the government and regulation of the land and naval forces;

15 To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

16 To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17 To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States,[1] and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18 To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. 1 The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.[2]

2 The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3 No bill of attainder or *ex post facto* law shall be passed.

4 No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5 No tax or duty shall be laid on articles exported from any State.

6 No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

7 No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the

[1] The District of Columbia, which comes under these regulations, had not then been erected.

[2] A temporary clause, no longer in force. See also Article V.

receipts and expenditures of all public money shall be published from time to time.

8 No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION 10.[1] 1 No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2 No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3 No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

SECTION 1. 1 The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows

2 Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate, shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice.

[1] See also the 10th, 13th, 14th, and 15th Amendments.

In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.[1]

3 The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4 No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5 In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6 The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7 Before he enter on the execution of his office, he shall take the following oath or affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. 1 The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2 He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3 The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on

[1] This paragraph superseded by the 12th Amendment.

extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SECTION 2. 1 The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State;[1] — between citizens of different States, — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2 In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3 The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. 1 Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2 The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And

[1] See the 11th Amendment.

the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. 1 The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2 A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3 No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.[1]

SECTION 3. 1 New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2 The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

1 All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2 This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

[1] See the 13th Amendment.

3 The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States, and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names,

Go: Washington —
Presidt and Deputy from Virginia

New Hampshire

John Langdon
Nicholas Gilman

Massachusetts

Nathaniel Gorham
Rufus King

Connecticut

Wm. Saml. Johnson
Roger Sherman

New York

Alexander Hamilton

New Jersey

Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

Pennsylvania

B. Franklin
Thomas Mifflin
Robt. Morris
Geo. Clymer
Thos. Fitzsimons
Jared Ingersoll
James Wilson
Gouv Morris

Delaware

Geo: Read
Gunning Bedford Jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland

James McHenry
Dan of St. Thos Jenifer
Danl. Carroll

Virginia

John Blair —
James Madison Jr.

North Carolina

Wm. Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina

J. Rutledge,
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler.

Georgia

William Few
Abr Baldwin

Attest William Jackson Secretary.

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

ARTICLE I[1]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

[1] The first ten Amendments were adopted in 1791.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI[1]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII[2]

The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate;—The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

[1] Adopted in 1798. [2] Adopted in 1804.

ARTICLE XIII[1]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV[2]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV[3]

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

[1] Adopted in 1865. [2] Adopted in 1868. [3] Adopted in 1870.

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